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COMMITTEE ON JUDICIARY
January 21, 2005
LB 62, 42, 151, 173, 194, 104

The Committee on Judiciary met at 1:30 p.m. on Friday, January 21, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 62, LB 42, LB 151, LB 173, LB 194, and LB 104. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ernie Chambers.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the third day of our committee hearings. We're going to be hearing six bills today. I'll introduce the members of the committee. To my left is Senator Flood from Norfolk; Senator Friend from Omaha; Senator Aguilar from Grand Island; the committee clerk, Laurie Vollertsen; the legal counsel to the committee, Michaela Kubat; and Senator Foley from Lincoln. I'll introduce the other members as they arrive. I also want you to realize that at times Senators have to come and go to introduce other bills so please don't take offense if somebody leaves during the hearing. It's that they have other business to attend to. If you plan to testify on a bill, I'm going to ask you to use these two on-deck chairs and sign in prior. But we're going to use the on-deck chairs so that we can expedite people testifying. Following the introduction of each bill, I'll be asking for a show of hands on who intends to testify. At that time we'll then hear proponent testimony and then we'll have opponent, people opposed to the bill. And then we'll have neutral testimony. When you come to the stand there to testify, please state your name and spell it for the record. All of our hearings here are transcribed. That will greatly assist the transcriber. Due to the large number of bills the Judiciary Committee has we are utilizing the Kermit Brashear memorial lighting system (laughter). The introducer will get five minutes to open on the bill. Then all other testifiers will get three minutes. And so, because we have such a large number of bills here in the Judiciary Committee, I ask for your assistance in helping us get through those. The rules of the Legislature state that there are no cell phones allowed in hearing rooms so if you have a cell phone please disable it so that it does not ring. That includes committee members (laughter). We won't allow people to read other people's testimony. If you have

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a letter from somebody else, an acquaintance, a group, we will take that as part of the record but we won't allow you to read that testimony. With that, oh, we've been joined by Senator Combs from Friend, Nebraska. With that, we're going to begin the hearings with LB 62. Senator Beutler is here to open on that bill. Could I get a show of hands of who wishes to testify in support of LB 62? I see three. Could you make your way to the on-deck area, the proponents? Can I get a show of hands as to who is going to testify in opposition to LB 62? I see one. And are there any neutral testifiers to LB 62? I see none. Okay, so again, the introducer will have five minutes to open. The yellow light for those people that testify. After that, the yellow light will come on at one minute and then red means stop. So Senator Beutler to open on LB 62.

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SENATOR BEUTLER: Mr. Chairman, it's a delight to be back in the red light district (laughter). I'm here today to ask you to consider again a bill that you had last year and turned out to the floor of the Legislature but it didn't proceed for a variety of complicated reasons as I understand it. But the gist of the bill is to provide a lien in certain circumstances for chiropractors. The situation in which the lien would be provided is described briefly in the bill itself and the current language of the bill. It just says that whenever any person employs a physician, nurse, or hospital, those three categories, to perform professional services in the treatment of an injury and such injured person claims damages from the party causing the injury then that physician, nurse, or hospital shall have a lien upon any sum awarded the injured person. So, in other words, a lien basically is a legal mechanism which really ensures that certain funds are held and cannot be secreted away or expended. And what this bill proposes to do is in a situation where an individual has been awarded a judgment or has agreed to a settlement the funds would be held not only for the benefit of physicians, nurses, and hospitals who provided services but also in the event that a chiropractor provided services maybe for a back or a neck injury that he or she also would be entitled to a lien in that situation. About four years ago for those of you who might be interested in a little bit of the history of this, you might

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ask if the word physician doesn't cover chiropractors and four years ago the chiropractors argued in the appeals court that they were included under the definition of physicians. But the court in that case basically said it was a matter of statutory interpretation and that the intent of the Legislature is expressed by the omission and exclusion of the term chiropractor from 52-401 which is the statute we're talking about. When other health providers are specifically included in the statute means that if the Legislature intended for chiropractors to be included in the physician lien statute the Legislature should have specifically listed chiropractors. Then it goes on to say that the practice of chiropractic is a skilled profession. The court admits that it is, indeed, a skilled profession, that they are professionals but they also said that the previous holdings have been and they're sticking to the fact that the practice of chiropractic is not the practice of medicine and, therefore, they're not physicians, that they're two distinct licensing procedures. And they did go on to again reemphasize the professional nature of the chiropractic practice indicating that injured claimants, that those who treated injured claimants were competent to testify as to injury causation and to testify in court. So we're asking you today to come down on the side of the chiropractors, and, you know, judging them to be what they are, in fact, a professional group who provide services to injured parties. And on that basis to include them with the other practitioners who provide services to injured parties and allow them to have the same kind of lien. And there will be at least one chiropractor following me who can describe for you in some details what kind of education and training is required to be a chiropractor, hopefully, to reinforce in your mind the fact that they do deserve to be included because they are skilled and professional people. Thank you, Mr. Chairman.

SENATOR BOURNE: Thank you, Senator Beutler. We've been joined by Senator Pedersen from Elkhorn. Are there questions for Senator Beutler? Senator Beutler, so the chiropractors did enjoy the benefit of the lien law for a period of time. There was a court case. Because they weren't specifically enumerated in the statute they were taken out. Is that an accurate...?

SENATOR BEUTLER: Senator, I'm not sure if that's accurate

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or not. Certainly, with the court case they were not allowed to recover under the statute. I'm not sure if they ever were, whether they ever reached that status.

SENATOR BOURNE: Okay. Well, I'm sure we'll get some clarity. Thank you very much.

SENATOR BEUTLER: Right.

SENATOR BOURNE: Will the first testifier in support of the bill come forward? Welcome.

SCOTT DONKIN: Thank you. Okay, my name is Scott Donkin, D-o-n-k-i-n. I'm a chiropractor in Lincoln, Nebraska. I practiced in Lincoln for approximately 24 years and through the course of my time up until the last few years we've enjoyed a good relationship with attorneys and insurance companies and in regard to treating injured people whether they have been injured at work or in an automobile accident. And then when the interpretation of this particular law was made a few years ago, we've had some trouble since then. I'll give you one example. A gentleman was injured in an automobile accident in February of 2001. He was hit from behind while he was a driver in a car. The force of the collision caused him to collide in the car in front of him so he was sandwiched between two cars. His injuries were rather extensive and he required extensive treatment. But what we were able to do is we were able to provide the treatment. We were able to render the reports for both the attorney and the insurance company for them to be able to settle the case. In June of 2003, the case was settled. We had tried to send a lien to the representing attorney and we had sent it to him twice and it wasn't returned. So we were following up on the case. We didn't know that the case was settled in June of 2003. In September of 2003, we, through our tracking systems, located the patient and found out that the case was settled. And I called the attorney and he said, yeah, we settled the case. And I said, well, how come we weren't notified or we, you know, weren't involved with, you know, the payment of our bill? And he says, well, you don't have a lien law. And I would be doing a disservice to my client if I would have honored that. So what the attorney did was had his client, our patient, sign a release form, releasing all the funds to the patient. And then the patient was supposed to reimburse us. But we weren't

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informed of that and so what we had to do was we had to pursue collection in regards to this patient. And we finally settled a year after that. So what happened was it caused us some confusion and discord with the relationship with the attorney and with the relationship with the patient. The bills were never questioned. The amounts were never questioned and it was settled in a reasonable manner. But because of the confusion with this lien law it created a lot of work and a lot of extra efforts in order to get this resolved. We had to settle for less than the amount with regard to the patient so that we could settle it.

SENATOR BOURNE: Thank you. Questions for Mr. Donkin?
Senator Combs.

SENATOR COMBS: Hi. I just had a question. Are there some cases in which you are the exclusive medical provider of record when...?

SCOTT DONKIN: Yes.

SENATOR COMBS: Okay. Meaning that you are under your scope of practice, you're providing diagnostic services, you're doing a plan of treatment for the person, you provide the care, you evaluate the care, and change the plan of treatment as indicated and then you close out the case entirely in and of your own scope of practice, is that correct?

SCOTT DONKIN: That's correct.

SENATOR COMBS: Okay. Thank you.

SENATOR BOURNE: Thank you. Further questions? I have a question, Mr. Donkin. Go back to the situation that you outlined with the car accident.

SCOTT DONKIN: Yes.

SENATOR BOURNE: Say the individual in the car that was hurt, that was your patient. Say, he had health insurance with any health insured carrier. And say that you're a contractor to that company so you're under contract to insurance company A. Say you have provided a thousand dollars worth of bill charges to that injured individual and

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yet your agreement with that individual's health insurance carrier says that your reimbursed amount would be say, \$500. So you have a thousand in bill charge, his health insurance carrier and your agreement has discounted amount of \$500. How much is your lien for, the thousand or 500, assuming your bill passes?

SCOTT DONKIN: Well, I haven't encountered that situation. I'm not really sure how it would play out. Our bills are rendered according to what we provide and traditionally they're sent to an automobile insurance carrier that evaluates claims differently than what a health insurance carrier would do that. I really...I'm not sure how that would play out, sir.

SENATOR BOURNE: Well, I do...I think that's relevant as it relates to the lien and I know there's been some opposition to the bill in the past because there wasn't clarity as to how much the lien would be for. And as I understood it, there was a court case that resolved that. But it sounds like there's not an awareness in the chiropractor community that...

SCOTT DONKIN: I'm not aware of it.

SENATOR BOURNE: Okay. Thank you. Further questions? Thank you. Will the next testifier in support of the measure come forward?

DOUG VANDER BROEK: Good afternoon. I'm Dr. Doug Vander Broek and I'm a practicing chiropractor. I've practiced in Lincoln for 21 years so I'm representing myself here today. I'm also a member of the board of directors of the Nebraska Chiropractic Physicians Association. And throughout my practice in Lincoln in about 21, almost 22 years, our liens for services have always been honored by insurance companies, by attorneys which were involved in injury cases. And until about two to two-and-a-half years ago, we started receiving situations such as Dr. Donkin described where the checks for the chiropractic bills were sent either directly to the attorneys or to the patients and, as a result, we needed to involve ourselves in legal action against the patient to recover those costs. Just recently, about six weeks ago, we had a case in our office where we treated an injured person. That person was treated

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and released to a hundred percent recovery with no residuals due to the accident at all. At the beginning of the case the proper liens were filed with the insurance carrier and also with the patient's attorney. And my staff filed those liens as we always have. And some time after the case was closed, our staffperson found out that settlement had been made and payment had been disbursed for that case and the check had been disbursed to the patient's attorney. And when we tried to contact the patient we found out that the patient had previously left and lived somewhere in the state of Montana and were not able to track them down. And my staffperson contacted the insurance adjuster involved in this case and asked why it was that our check for our bill was not sent directly to us and the response was well, you don't have a lien law so we don't need to honor that. In the cases that we've heard, not only in our office but other offices, at no time have we ever had any insurance company quarrel with the amount of our bills, the usual and customary charge, the frequency of treatment, the length of treatment. And, in fact, our chiropractic bills are being paid 100 percent. The checks are being written but the problem is that the check is being written to the attorney or the patient rather than to the healthcare provider which performed the service. As a result, we've had to proceed to legal proceedings against patients to recover those payments and which has involved more costs and more time for us and for the patient also. Sometimes the patient misunderstands the things said, that all the bills have been paid, the medical bills have been paid so when they receive any settlement check they don't understand that they still have other bills outstanding. Forty-nine other states at this time, every state other than Nebraska protects the medical liens of chiropractors and we're just asking today that you would consider this. And in the sense of fairness, we're just asking to be treated the same as any other healthcare provider, any auto mechanic, and any builder which is currently protected in Nebraska statute. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Vander Broek?
Senator Combs.

SENATOR COMBS: So I understand. When these bills are distributed currently, the physicians, nurses, and hospitals get individual checks issued to them, is that right?

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DOUG VANDER BROEK: Correct.

SENATOR COMBS: So right now, in statute, a nurse is receiving payment for her services in statute. That's what it says here.

DOUG VANDER BROEK: That's correct.

SENATOR COMBS: And we don't have chiropractors in there.

DOUG VANDER BROEK: That's correct.

SENATOR COMBS: Yet a nurse acts under the auspices of a physician unless she's in advanced practice status but basically as a nurse I could bill for services and get a check cut to me if my services were billable and covered by the insurance company?

DOUG VANDER BROEK: That's correct.

SENATOR COMBS: Hm. Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

DOUG VANDER BROEK: Thank you.

SENATOR BOURNE: Next testifier in support?

DAVID KASSMEIER: Hello there. My name is Dr. David Kassmeier. I practice in Norfolk, Nebraska. I am the president...

SENATOR BOURNE: Could you...

DAVID KASSMEIER: ...oops sorry.

SENATOR BOURNE: ...could you spell your last name for us, please?

DAVID KASSMEIER: Sorry. K-a-s-s-m-e-i-e-r.

SENATOR BOURNE: Thank you.

DAVID KASSMEIER: Yes. As I said, I'm a practicing

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chiropractor physician in Norfolk, Nebraska. I am currently the president of the Nebraska Chiropractic Physicians Association. I'm here representing the rest of the association and the chiropractors in the state of Nebraska. Our association represents approximately 80 to 85 percent of the practicing doctors of chiropractic in our state. Our educational background consists primarily of a four-year undergraduate degree with a five-year graduate school degree in chiropractic education. That includes a one-year internship that you were practicing underneath a licensed chiropractic physician in that school. And in, I guess, in answer to that you had to...Dr. Donkin, I haven't come across that but the way that that would be interpreted in my eyes as president would be that we don't have a contract with our auto insurance agency. Like if someone comes in for an auto accident, we don't have a written contract with them for a fee schedule so, therefore, it would be paid a hundred percent. If it would go over to their medical or their med pay for their auto accident it would then be covered underneath that contractual agreement. So that's how that would be played out. I know that is a controversial aspect of it and if we have a contract with that company then, yes. But, you know, a lot of times just with the auto insurance and we don't have contracts with them. So that's about all that I have for right now.

SENATOR BOURNE: Thank you. Questions for Mr. Kassmeier? Just a quick one. Go back to that question that I asked Dr. Donkin. Say that that person skipped town then and, I mean, basically what the lien law allows you to do is, it just eases your collection because the check has to be made jointly.

DAVID KASSMEIER: Right.

SENATOR BOURNE: It doesn't eliminate the fact that you don't have a lien law...

DAVID KASSMEIER: Exactly.

SENATOR BOURNE: ...doesn't eliminate your right to collect. It just makes it easier if the law was in place.

DAVID KASSMEIER: Well, if we would have a lien law once the check is written to the patient then we have a very, very

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difficult time, yes, if you can find that person at all.

SENATOR BOURNE: Okay. Do you ever...and again go back to the situation I outlined with him where that person who was injured had insurance with insurance carrier A.

DAVID KASSMEIER: Um-hum.

SENATOR BOURNE: Do you ever then...you attempt to bill the property carrier...

DAVID KASSMEIER: Okay.

SENATOR BOURNE: And then say that person skips town. Then, you know, six months or a year later, do you ever try to submit the bills then to that person's health carrier for payment?

DAVID KASSMEIER: We try but they'll say that they will not do anything until the case has been settled. And a lot of times that they...oh, sorry.

SENATOR BOURNE: No, I guess what I'm saying is you're trying to bill the auto insurance carrier...

DAVID KASSMEIER: Oh, I see what you're saying.

SENATOR BOURNE: ...because you're going to get a hundred percent of billed rather than your negotiated discount amount with the health carrier.

DAVID KASSMEIER: We would always go with the auto insurance carrier first because that's what it's for.

SENATOR BOURNE: Oh, okay.

DAVID KASSMEIER: And then we would attempt to go with the...

SENATOR BOURNE: If you can't otherwise collect...

DAVID KASSMEIER: ...if you can't we would try...yeah, if we can't collect we would then try and go with their health insurance. A lot of times that doesn't work at all.

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SENATOR BOURNE: But doesn't that kind of strike you as you want the best of both worlds? You want to be able to go after the auto carrier because you can get a hundred percent of billed,...

DAVID KASSMEIER: Um-hum.

SENATOR BOURNE: ...but then if somehow that doesn't work out and the individual is not there to make payment then all of a sudden you want to go with the health carrier. Does that kind of strike you is you kind of want both sides of the...

DAVID KASSMEIER: No, we're just looking to get paid.

SENATOR BOURNE: Right.

DAVID KASSMEIER: You know, whether it's with a contractual agreement or with the hundred percent. We're just looking to get...right now we're just getting left with nothing. I mean writing off...I wrote off last...two years ago I ran into it or a year ago, excuse me, and I wrote off a \$2,500 bill. So, I mean, we're getting nothing and that's why we need this lien bill because the attorneys just write out the check. And then you can go back to the attorney and they can't even get it from them.

SENATOR BOURNE: Okay. Thank you. Further questions? Seeing none, thank you.

DAVID KASSMEIER: Thank you.

SENATOR BOURNE: Are there any other testifiers in support? Okay, if the opponents to the bill would make their way forward to the on-deck area and sign in, please? First testifier in opposition to LB 62.

ROGER KEETLE: Oh, no, I'm still supporting.

SENATOR BOURNE: Okay (laugh).

ROGER KEETLE: (Exhibit 1) Sorry, sorry. I was in the process...for the record, my name is Roger Keetle, K-e-e-t-l-e. I represent the Nebraska Hospital Association. The sign said I should spell that. I think since it's in

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our written testimony I'll skip that part of it. On behalf of our 85-member hospitals and the 35,000 people hospitals employ, the Nebraska Hospital Association wishes to support LB 62. The reasons are that chiropractors like any other health professional treat people that are in situations that need to be treated and they provide the care and look for payment later. And I think that's particularly how we want to run the emergency system in the state. And that's why that is...that lien is a good public policy for you all to pursue. I would say that we would support LB 62 only if the word chiropractors are added to the statute. And you will have a bill later, LB 194, which also amends this particular lien law that we are very much opposed to. So with that, I would take any questions you might have.

SENATOR BOURNE: Thank you. Questions for Mr. Keetle? Do you intend to testify on LB 194?

ROGER KEETLE: Yes, we do.

SENATOR BOURNE: Did you hear my questions to Mr. Donkin and Kassmeier about the amount of a lien?

ROGER KEETLE: Well, I did and the auto insurance is going to be primary and there's a lot of health insurers that won't pay because the auto insurance is primary. So that's where you go first and that's my understanding of why you go after auto insurance first because...or the judgment first because the injury occurred from the accident and that's the tort fees should bear the burden. And, you know, this law passed...the lien law passed in 26 long before health insurance and that's...the lawsuit should be the pot of money that the first collection is from and that's why there's a difference. And that difference is is when you file a lawsuit it takes time to litigate and it's not a discounted amount from anybody. You have to wait till the end of it and that's how it works.

SENATOR BOURNE: In your testimony you've mentioned a case called the Midwest Neurosurgery v. State Farm Insurance Company, and I can get the cite for anybody that wants it. And you heard my questions to the other two testifiers in support. And they indicated that the bill charge is the amount the lien would be for. Are you in agreement with that statement?

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ROGER KEETLE: Unless the provider elects to file with the health insurer and that takes payment in full from the health insurer, it's like accord and satisfaction. You had a debt, you received from the health insurance company as payment in full. You don't have a lien anymore.

SENATOR BOURNE: So you think that the Midwest Neuro...your interpretation of that case is is that you can select who you want to bill for your services?

ROGER KEETLE: Generally, it's who...number one, the auto insurance or the judgment will always be primary. Number two, if there is health insurance and you do elect to bill the health insurance that's what you get paid.

SENATOR BOURNE: Okay. Further questions for Mr. Keetle? See none, thank you.

ROGER KEETLE: Thank you.

SENATOR BOURNE: Are there any other testifiers in support? We'll now take opposition testimony. Are there other testifiers in opposition? I thought there were a couple of hands when I had asked earlier. Thank you. Welcome.

GREG COFFEY: Thank you. My name is Greg Coffey. I'm an attorney with Friedman Law Offices and I'm here on behalf of NATA. If I'm supposed to spell that out, that's N-A-T-A (laugh).

SENATOR BOURNE: Your last name is N-a-t-a?

GREG COFFEY: Coffey, C-o-f-f-e-y. The organization is NATA.

SENATOR BOURNE: Thank you.

GREG COFFEY: And I'm here in opposition to the bill, LB 62. I disagree with what Mr. Keetle was saying about the auto insurance being primary. I don't think that's the way it works in reality. I'm going to be testifying in favor of LB 194 and I'll be able to get in more specifically to my reasons when I testify on that one. But we have the same general concerns with respect to LB 62 and inviting

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chiropractors into the fold. The same problems that are created that led to us wanting to amend the lien statute by way of LB 194 are some of the same reasons that we oppose, bringing chiropractors into this fold in LB 62. For the record, neither I nor any attorney in my office that I'm aware of has ever stiffed a chiropractor. You know, I don't think that's a good way of doing business and we just don't do it. We make sure that everybody gets paid out of the proceeds of the case. The problem is that sometimes there's just not enough money in a settlement. Sometimes there's just not enough money to go around. If the amount of the damages exceeds the policy limit of the liability insurance somebody is going to be left without something. And when there's an available source of funds and that is health insurance, that health insurance should be utilized, should be available. And that's what it's there for. As you alluded to, Senator, during your questioning of Dr. Donkin, there is...the amount of what the provider actually bills for, in this case, chiropractors, what they actually bill for. And we might call that the sticker price, okay? And then there's an amount they've agreed to accept from health insurance companies and that agreement involves a lower price. The health insurance companies negotiate a better deal so it's a lower price but the providers agree to that amount so that they can get the business of the people that come in to treat with them. And that's an agreement that the patient should be entitled to rely upon. It doesn't mean that the chiropractor is left without money at the end of the day. They get paid and they'll get paid sooner if they put it through health insurance based on the agreement that they've already reached with the health insurance provider than if they do wait to the end of the litigation or till settlement. I don't think that it does anybody a service to put that off, particularly when the many occasions occur that there's simply not enough money in the available pool to satisfy all the damages let alone the medical expenses.

SENATOR BOURNE: Thank you. Questions for Mr. Coffey?
Senator Combs.

SENATOR COMBS: I just wondered, I thought I heard another testifier say that he didn't have contracts with insurance providers and you're saying in your testimony that that's what he needs to rely on first for payment. There's some, a

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disjoint there. Can you explain to me what the difference between what he said and what you're telling us now?

GREG COFFEY: Yeah, I think what he was talking about and I can't speak for him but my guess is that what he was saying is that he doesn't have a contract with the car insurance company and that would be true. But he may have a contract with the health insurance provider that my clients have through their work, something...the money for that health insurance has been deducted from their paychecks or they've been paying it out of their own pocket in some cases. That they have that health insurance available to them. The chiropractor may have a contract with that health insurance company, saying that I know that my normal charge may be \$50 per visit but I agree to accept \$25 per visit in order to get paid and in order to get those customers, in order to get those patients coming into my door. And if they're going to obtain the benefits of that arrangement which is that they get the patients through the door they also should accept the responsibility of that which is, they don't try to circumvent that relationship. They don't try to circumvent that contract by going after a lien and relying on a lien for the full amount of the ticket instead of getting paid...if they're concern genuinely is just that they want paid and don't want to be left out in the cold like they've described then they should presumably not oppose the amendments that we're suggesting in LB 194.

SENATOR COMBS: Additionally, is there anyone...maybe I could have asked the chiropractors this. There must be some data as to how many chiropractors are getting stiffed. You're telling me that no one is getting stiffed. They're telling us that they are getting stiffed. So where is the truth between those two pieces of testimony?

GREG COFFEY: I'm telling you that it hasn't happened out of my office.

SENATOR COMBS: Okay.

GREG COFFEY: I wouldn't allow that. I...yeah.

SENATOR COMBS: Just one office? Okay.

GREG COFFEY: Well, I can only speak for myself.

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SENATOR COMBS: Okay.

GREG COFFEY: And presumably for my colleagues. I know that we haven't done it.

SENATOR COMBS: So what is the legal remedy for the ones that are getting stiffed at this point in time that exists?

GREG COFFEY: Well, I'm not going to tell you that I think that it is a good thing that a chiropractor gets left out in the cold if there is no insurance whatsoever to go after. And, you know, occasionally we have clients that don't have health insurance available to them and that's where this would become important. And I'm not telling you that I would oppose having chiropractors paid. As I tried to make clear when I got up here initially, my concern is the same concern I'm going to be expressing with respect to LB 194 and given the problems if we leave the lien statute alone, I don't want any further problems with the lien statute developing as a result of having another set of providers being brought under the protection of the lien law. I want to clean the lien law up too and, but in a different way. And if it's cleaned up in a different way then I guess I don't really have any objection to chiropractors being brought within its protections.

SENATOR COMBS: And just one last...if you'll just answer this very quickly. When you get a certain pot of money that has to be divided so and so, does the full...do you equally ding everybody or do you get your fee first and then everybody goes down? How does that work?

GREG COFFEY: I try not to ding anybody (laughter). I have only asked...

SENATOR COMBS: Does everybody feel the pain or do you guys get your money and then everybody else gets like what's left?

GREG COFFEY: I have only asked on rare occasions, I can think of one time that I've asked a chiropractor to reduce a bill. And it was a case where there just plain wasn't enough money to go around. I can think of one time that I've done that. I know that other people, other attorneys

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that I'm familiar with, may ask on a more regular basis because they deal with more chiropractors than I do. And, you know, sometimes you're in a situation where the amount that the insurance company is offering is just not going to be enough to put any money in your client's pocket. And so everybody has to feel a little bit of pain.

SENATOR COMBS: Okay.

GREG COFFEY: In those occasions I think that the providers have asked what is the amount that you're reducing your fee by? On other occasions that I've asked people to reduce, not chiropractors, other providers that I've asked to reduce, they've asked that question of me. And I think that's a fair question and I have reduced my fee...

SENATOR COMBS: Okay.

GREG COFFEY: ...on many occasions, many more than actually that I've asked providers to reduce their bills.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Friend.

SENATOR FRIEND: Just one. Hi, Mr. Coffey. As you can see, I'm going to follow Senator Flood's lead. The other day he talked about full disclosure. Want to let you know, I have two brothers. One of them is an attorney and the other one is a chiropractor (laughter), honest to God. Now here's my question, I guess, and we've actually had this conversation at the kitchen table, okay? I'm not sure it's a matter of getting stiffed or anything else. I do have a question. I don't think it's a matter of getting stiffed, somebody stiffing somebody else. It's a matter of negotiation. I would ask you what you really think of this, you know, proposition. I mean, right now there's a perception out there, maybe a reality, that chiropractors aren't on the same negotiating level with, you know, other certified medical professionals. And, of course, the attorneys are, you know, right in the middle of that negotiation process. Now, is that where a lot of the heartburn is right now? I mean, are we...it's not somebody stiffing somebody else. It's that, boy, here's another, you know, stick in

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the...another person stirring the pot. And it makes it more difficult. It makes it more disturbing. And I guess I'm trying to remember that I've got the little brother here and the little brother here trying to battle this thing.

GREG COFFEY: I don't know if it's one of status. I mean, I don't want to go there. I've got a lot of clients...

SENATOR FRIEND: Well, I didn't say status, sir. It's a negotiation, another, you know, just another confusing piece of the puzzle that the attorneys that are managing this process a lot of times have to deal with. I mean, in fairness.

GREG COFFEY: And I thought of another case that I did ask a chiropractor to reduce on so maybe two in six years. If I understand your question, what you're asking is whether we're using kind of an additional negotiation opportunity with the chiropractic bill to reduce the amount that they get paid?

SENATOR FRIEND: Well, I could give you a couple of examples where I know that that happened but I mean, I'm not going to do that. I mean, it's irrelevant to me. I mean, it's irrelevant because I'm asking about a specific situation and it's unfair to you. I mean, it turns hypothetical because I don't want to throw this out but just that that attorney right now because this is trying to become, you know, somebody's trying to get this to become law, that attorney is looking at that chiropractor situation as just being different, not necessarily a status thing, just being different and that they're not part of that negotiation process. So my question would be, are there attorneys out there, not necessarily stiffing people but saying, look, you're not at the table here? We don't really have to deal with this right now. I mean, and nothing against you, you're just not at the table.

GREG COFFEY: Let me...I guess I'm uncomfortable with the framing of the question. I think I'll answer the substance of it but let me clarify. When you say, you're not at the table, you're not part of the negotiation. I don't think they should be at the table, part of the negotiation. When I settle a case for my client I have one client and one client only and that's the person who's hired me to

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represent them and do my best to zealously represent their interests within the bounds of the law. Nobody else is a party to that except that...my client and the person who caused them harm and their insurance carrier. Now when I go get as much as I can get for my client, then I go to the providers and I call them up and I find out, what are your outstanding balances? What hasn't been paid? And I find out from all the providers what's left over. And if I'm going to run into a money problem, I know that there are attorneys out there that will say, hey, will you take less? Okay? They shouldn't be part of the negotiation process as far as what is the final outcome in the claim. There is another negotiation that may take place when you go back to them and say, you know, there's a liability issue here. We thought it was a clear liability case; it's not as clear as what we had hoped. We aren't going to be able to cover all of the damages that the client has sustained. Will you take less? Frankly, I'm going to make sure before I send out the money that I've got some kind of agreement from everybody that covers all of their bills and that they're satisfied with because I don't want Dr. Donkin or any of the other chiropractors that have been up here to testify to say that Greg Coffey or Friedman Law Office has failed to get my bill paid. I don't want that bad blood between us and I'm very cautious about that. And I, you know, I think that my colleagues in the legal profession are as well. But I don't think that the chiropractors should be at the negotiating table when I'm making...trying to reach an agreement with the bad driver's carrier as far as what damages my client has sustained. I don't think they should be at that table.

SENATOR FRIEND: And I guess that's part of my point, I mean, that's an excellent point that you raise and it's part of my point that they're forced into that situation now because they don't have the status in this law...

GREG COFFEY: I don't think that's true.

SENATOR FRIEND: Well, I got...

GREG COFFEY: I think...

SENATOR FRIEND: ...I've got people on both sides telling me it's true and it's not true so I guess we're trying to get to the, an example of a chiropractor calling up an attorney

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and saying, look, we're not in here. I need this money. There's a judgment here. How do I get it? And the attorney going, sorry, too bad.

GREG COFFEY: Senator, let me...

SENATOR FRIEND: So what you're saying is probably true and they're not part of the negotiation process and they shouldn't be. But here you would be almost alleviating that problem, I guess, for them is what I'm saying.

GREG COFFEY: Let me clarify. As I mentioned to Senator Combs, my problem with LB 62 is that I have a problem with the lien statute generally and I'm hoping to get that changed through LB 194. I'm...you know, I'm not here trying to tell you that chiropractors should be excluded as a group from the lien statute. I'm telling you that generally speaking, I don't like the lien statute the way it stands because it seems to allow or providers are attempting to use it as a way to circumvent other payment avenues, okay? They don't want to...they make a deal with the health insurance company, saying that they'll accept 25 bucks per visit or...I'm just using that hypothetically, saying that they'll accept a certain amount of money for the type of treatment they're rendering. They do that to gain an advantage. When they get the patient in the door and find out that it's a motor vehicle case, that there may be some liability involved, they refuse to accept that amount of money which they had previously agreed to accept and they try to go through the lien process to get the full sticker price, the sticker price that nobody else has to pay. Okay? And I was going to use the example in testimony later on. If you're driving home from this proceeding here today and you get struck by a drunk driver and you go to your brother...well, not your brother. Let's say you go to a different...

SENATOR FRIEND: Which one? (laughter)

GREG COFFEY: ... (laugh) both of them. And you go to a hospital for medical treatment, the same hospital that the drunk driver goes to. They will gladly accept that drunk driver's health insurance and bill according to the health insurance rates. Okay? But they will take your bill and they'll say, we're not going to reduce pursuant to the fee schedule that we've agreed to through the health insurance

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company. Instead, we want you to pay the full amount and this is what Mr. Keetle was talking about. And this is what I very much disagree with what he was saying. The pot of money here, the pot of money that comes from the liability insurance is not the whole pot. I am going to be talking about a case later. A client of mine testified before the Business and Labor subcommittee two years ago when we attempted to get this bill introduced before. It turned out that she happened to have been friends with one of the other senators on the committee and his name escapes me at the moment (laugh). Denny, I remember she called him Denny.

SENATOR COMBS: Byars?

GREG COFFEY: Byars, Senator Byars. I'm sorry, thank you (laugh). And you can check with him to verify that what I'm telling you is in fact the case. She had a situation where she was in a car accident that by all rights should have killed her. She should not be with us today. She was taken to the hospital. She incurred \$200,000 worth of medical expenses in a very short period of time and climbing. Okay? The guy who hit her had \$50,000 worth of liability coverage. She had \$50,000 worth of underinsured coverage. Now, if what Mr. Keetle is...and she also had health insurance that was on the line, ready, willing, and able to pay for her medical bills in accordance with their provider agreements. Okay? What Mr. Keetle is telling you is that that entire \$100,000 pot of money shouldn't go to pay her wage loss which she incurred significant wage loss, shouldn't go to pay any pain and suffering that she's incurred. It should all go to pay the medical bills because they don't want to take the rates that they had agreed to and that's what happened to this woman...

SENATOR FRIEND: I understand. That answers the...

GREG COFFEY: ...That's my concern. I'm not concerned about the chiropractors getting paid. I'm pleased if they get paid. I just...I don't want them going...

SENATOR FRIEND: No, I'm not...that's...you answered my question and that's good. I understand that you don't have a problem with chiropractors and I understood that before.

GREG COFFEY: Okay.

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SENATOR FRIEND: But I think you cleared it up so, thanks.

SENATOR BOURNE: Thank you. Further questions? Let me just ask you one quick one and brevity is the soul of wit. When I asked the question earlier of the other chiropractors, and I will tell you, I'm sympathetic to the chiropractors. I do believe they should be part of the lien but I also have some concern with accident victims who are, in my mind, denied the benefit of their health insurance.

GREG COFFEY: Um-hum.

SENATOR BOURNE: And when I asked the providers what is the amount that they can lien for, there seems to be some lack of clarity. And as I understand the Midwest Neurosurgery case, the most a provider under the lien law can file a lien for is the contractually negotiated amount between that individual who's hurt and their health carrier. Is that an accurate statement?

GREG COFFEY: I think that there is still a small area of uncertainty that the Supreme Court really didn't address in that decision and that's whether they have to...in that case, there was policy language that went to the effect of paid in full. Okay? We agree to be paid in full. Presumably, they might be able to contract out of that paid in full language and circumvent the decision.

SENATOR BOURNE: Contract out. By that you mean between the provider and the injured party.

GREG COFFEY: And, no, and the health insurance carrier. Just leave out that paid in full language or alter the language of the health insurance contract so that they don't agree to be paid in full by whatever that reduced amount would be. And if that language is taken out then all the, you know, the decision is up in the air again. I think it leaves it into some question which is why I think it's important that we change the lien law to say, if the...you know, if the injured person has health insurance you got to use it. That's what I think it ought to say.

SENATOR BOURNE: Okay. Thank you. Further questions? See none. Thank you, Mr. Coffey. Are there further testifiers

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in opposition? Are there any testifiers in a neutral capacity? Senator Beutler to close.

SENATOR BEUTLER: Mr. Chairman, members of the committee, this is my first go around with the chiropractor lien law. And I was unaware of LB 194 or the issues in LB 194. Obviously, you have other things to consider with respect to this particular statute. However, that being said, it appears to me like the entrance of the opposition to this bill is being done to confuse issues and to distract from what should be a clear issue on this bill. There are two separate questions here. The questions...the first question is who should have a right to benefit from the lien law, whatever that lien law is. And for now, we're talking about the current lien law. And that question I submit to you should be decisively answered separately and clearly, chiropractors belong in that lien law. Again, I don't know what's in LB 194. I'll certainly find out fairly quickly now and I'll read that case, Mr. Chairman, which I'm also not aware of. But I'm not sure they all really pertain to this bill itself. You all will have the opportunity to decide these other matters. I assume when LB 194 does come up, you can change that law at that time if that is your wish and chiropractors will have to abide by whatever law you then determine is the rightful version of the law or the best version of the law. But I would simply encourage you to think clearly and separately about the two issues and to advance this bill and let these people have their rightful place in the hierarchy of medical liens.

SENATOR BOURNE: Point well taken. Thank you. Questions for Senator Beutler? Seeing none, thank you.

SENATOR BEUTLER: Thank you, Mr. Chairman.

SENATOR BOURNE: That will conclude the hearing on LB 62. Senator Redfield to open on LB 42. As Senator Redfield makes her way forward, if I could ask the proponents of LB 42 to make their way to the on-deck area. Welcome to the committee, Senator Redfield.

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SENATOR REDFIELD: Thank you. Senator Bourne,

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congratulations. I am pleased to see you in that seat.

SENATOR BOURNE: Thank you.

SENATOR REDFIELD: For the record my name is Pam Redfield, R-e-d-f-i-e-l-d. I am the state senator from District 12, the "Independence" District. I'm here to introduce to you today LB 42. Nebraska currently has a Construction Lien Act. You will find it in chapter 52 of our statute books and when you read Section 52-136(5) it says that a protected party contracting owners' lien liability under a particular prime contract is the prime contract price less payments properly made thereon. And a payment is properly made and it goes on to explain how it's properly made. Now we could assume from that language that that means that if, in fact, you were to contract to have your roof repaired or a remodeling job done, that, in fact, if you had paid the contractor the sums that were due that you would not be subject to any liens. Apparently, Senator Beutler's quote from the previous hearing was very accurate when he said that the court said, if the Legislature meant then they should have specifically said because, apparently, we have liens that are being filed on the citizens of Nebraska. So I am here to appeal before you, lawyers and wise senators, not as a lawyer but as an advocate for the citizenry of Nebraska. I have passed out to you a letter from Linda Fagerberg. She is from Lincoln and I thought she summed it up very well as she told her story in the letter. "In my situation, everything was done by the book. Money was held in escrow, lien waivers signed, and money was released from the title company to the general contractor. All of this was done and yet as a homeowner I had no protection from subcontractors." Neighborhoods, Inc. wanted to be here to testify today. I don't know if they're in the audience. I've also submitted a letter of support from AARP of Nebraska. They are concerned about the liability or the vulnerability is a better term of the homeowners in Nebraska. What we are asking you to do is to adopt an amendment which would change chapter 52 of our statute books. It would not eliminate any of the sections that are there that cover payment in the case of where there was partial payments made. That still remains. In fact, if you look at the language on page 2, Section 1, it actually is in line 8 of the green copy where you see stricken Sections 52-125 to 52-159, the caused some people some grief. We are

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not striking those sections. They are the Nebraska Construction Lien Act. The bill drafters just inserted that language there so those sections of the law are not stricken in LB 42. The real change that we are asking you to adopt is in Section 11 which starts on page 12 and it reads that payment by a contracting owner to a prime contractor of all sums due, such prime contractor pursuant to a residential real estate contract for the costs of improvement of real property. This charges any construction lien filed or extinguishes the right to file any lien not yet filed. All sums due, I believe everyone should be paid. I believe that when you contract for work done you should pay your bill but I believe that once should be sufficient. Are there any questions? (See also Exhibits 2, 3)

SENATOR BOURNE: Thank you, Senator Redfield. Are there questions? Senator Flood.

SENATOR FLOOD: Senator, is it your position that this should apply only to residential construction?

SENATOR REDFIELD: That's the way this reads.

SENATOR FLOOD: Okay. And your intent is not for this to extend beyond residential construction.

SENATOR REDFIELD: I think that as a state we have an obligation to the citizenry. I think that we can recognize that within a business contract that they have available to them resources that the average homeowner does not and I think they would take means to protect themselves.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Redfield? So while you're not opposed to adding commercial contracts, you don't see the need? Is that an accurate?

SENATOR REDFIELD: Well, this is written...the language here is written. If you look on page 12, line 20, it says it's a residential real estate contract. That's the way it is written. And this is similar language to what you see in ten other states. Colorado is probably the closest to this language. Nevada and Delaware. There are other states that have what's called defense of payment which is a different

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way of wording the same protection where the lien is extinguished when the homeowner can prove payment.

SENATOR BOURNE: But you...I mean, you're not opposed to this being modified to include commercial?

SENATOR REDFIELD: I would leave that to you. I think that people should pay their bills and they should pay them once, not multiple times no matter who you are.

SENATOR BOURNE: I agree. Further questions? Seeing none, thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: Could I get a show of hands of those in the audience that wish to testify in support? (laugh) In support. Those in opposition. I see four. Any neutral testifiers? (laugh) I see a couple...no, no neutral testifiers. Would the first...so, again, in support? None. Would the first opposition testifier please come forward? And, again, are we signing in at the...on the on-deck area prior to testifying so we can expedite? Welcome to the committee.

WALT BROER: Senator Bourne, members of the Judiciary Committee, my name is Walt Broer. That's B-r-o-e-r. I'm the executive director for the Nebraska Building Chapter of the Associated General Contractors of America appearing here in opposition to LB 42 in its present form. Senator Bourne, you mentioned something about including commercial. There's, I believe, enough verbiage in here that would include commercial. Even if it didn't, we are still in opposition to this bill. There are a lot of very bona fide subcontract materials suppliers that would be left out in left field. One of the problems with so much of the home industry and we do have contractors, although we do represent mostly commercial contractors statewide ranging from some of the largest in the world and maybe some of the smallest. One of the problems with the home industry is that a lot of the homeowners themselves...we had a bill last year, I don't recall the exact number on it, where the contractors didn't finish the job or the owner did pay that particular contractor, all these sort of things put together. A lot of people, the homeowners themselves have a

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big part in this. They'll negotiate with perhaps a contractor that may not have the ethics that he should and it's very, very puzzling to me why some of the homeowners don't do their own homework. And in many cases, I'm a homeowner myself, I have 52 years of construction experience, I see everybody thinking I've got the low dollar. Right away they have an error in their hands because they should investigate how this contractor does pay his or her bills. There are many other avenues and this bill could be improved a lot. All of our Nebraska lien laws in construction could use an overhaul. I understand that. It was years ago when Doug Bereuter was still a member of this senate that all the lien laws were kind of rewritten and they're still very, very puzzling. And I think there should be a task force created to improve lien laws in the entire state of Nebraska. There's a lot of help that needs to be done. And at that time they went with our counsel, Dean Kratz, and my predecessor, Cal Solem, throughout the state of Nebraska trying to explain the lien laws. There are other avenues. Some states have pre-lien laws. There are bonds that you can purchase. There are just a number of things that could be put in this to protect the homeowner but this is not the proper vehicle.

SENATOR BOURNE: Thank you. It's Brauer (phonetic)?

WALT BROER: Broer, right.

SENATOR BOURNE: Questions for Mr. Broer? Senator Aguilar.

SENATOR AGUILAR: Did I hear you say that it was more the homeowner's responsibility to check and see if the general contractor paid his bills?

WALT BROER: The homeowner has all kinds of avenues. They can find out along with their lending institution and in many cases the lending institution does joint party checks. A homeowner can demand party checks, a two-party check.

SENATOR AGUILAR: Why isn't it the subcontractor's responsibility to do that same thing?

WALT BROER: The subcontractor would be more visual also, to make sure that they get paid. Many subcontractors in many states, as they say, they pre-lien it. They pre-lien a job.

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An owner, homeowner should know exactly who the subcontractors are on their job. That's the contractor's and the homeowner's responsibility to know who those subcontractors are and make sure that that subcontractor has been paid. So there's a lot of...all the parties are involved here together. This is a team effort in the construction industry. And I did hear of the word, assume. I do want to make it very clearly that my father years and years ago said in our industry there is no such word as assume. It either is a brick or it isn't. That's the same thing with this. It either is or isn't.

SENATOR BOURNE: Thank you. Senator Flood.

SENATOR FLOOD: You mentioned in the beginning of your testimony that you were concerned that this extended to commercial construction and that portions of the bill needed to be amended if it was just for personal real estate or residential real estate. What are you specifically concerned about in here that addresses...?

WALT BROER: I would say on page 2, just the definition. Excuse me, Senator, on 21, prime contractor means any person who makes a real estate improvement contract and contracting owner. I don't see anything that says just houses.

SENATOR FLOOD: Page 2, line ...

WALT BROER: Twenty-one.

SENATOR FLOOD: ...21, okay.

WALT BROER: Um-hum.

SENATOR FLOOD: Did you see anything else that concerned you about commercial?

WALT BROER: Perhaps going back to page 12, line 18. I don't feel that there's enough verbiage in there to differentiate.

SENATOR FLOOD: In Section 11.

WALT BROER: In Section 11, correct.

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SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions? Let me just clarify. So as I understand the bill, what it does is that an individual that wants to put an addition onto their home or let's make it even less than that. Let's go they want the roof replaced on their house although it probably would be a more complicated issue. Okay. So, you have a general contractor who contracts with the homeowner to do a certain amount of work. So in...take it to the roof situation. So the general contractor is too busy and we've seen this in cases where we've had hail. So he or she contracts with another subcontractor to put the roof on for Mrs. Jones...

WALT BROER: First...

SENATOR BOURNE: Wait a sec. So Mrs. Jones gives \$5,000 to construction company A and construction company A is going to contract that out to the second roofer and he's going to pay him \$4,000 and pocket the other thousand. The second construction company comes out and puts the roof on Mrs. Jones' house. Construction company A skips town. Mrs. Jones has paid and so you're saying that it's okay for the subcontractor to put a lien on her house. Is that what you're saying?

WALT BROER: That would be correct in that case. That's kind of a far-reaching scenario in the first place. That first contractor without the homeowner, if they have proper contracts of agreement, can't assign that contract.

SENATOR BOURNE: But wait. There's no uniform contract.

WALT BROER: Why not?

SENATOR BOURNE: We've had...well, we've had bills there regarding that that would set out statutory language of what had to be in that contract. And if I remember, you came in and testified in opposition to that bill. So I'm struggling as to how...Senator Redfield has given us this letter of this woman who paid in good faith a large chunk of money. The contractor skips town and all the subs are able to go back against her. That doesn't make any sense.

WALT BROER: That is a bit of a far-reaching scenario but it

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is true, Senator, what you've mentioned. I guess on our behalf and our members, I'm concerned about perhaps a lumber company, a large lumber company supplying plywood to the project. And then the contractor has been paid and the owner can even show proof that they've been paid if they have an itemized statement of what's being billed for that particular pay period.

SENATOR BOURNE: So you're not distinguishing between a subcontractor and a material person who aren't even in a contractual relationship with the homeowner but are with either the contractor or the subcontractor, still being able, when they don't get paid to go after the homeowner.

WALT BROER: That is a greater concern, I believe, than the first scenario although you have a good point.

SENATOR BOURNE: Thank you. Further questions? Thank you. Next testifier in opposition?

DICK JOHNSON: Mr. Chairman and members of the committee, I am Dick Johnson, J-o-h-n-s-o-n. I'm president and registered lobbyist for Associated Builders and Contractors. We're a statewide group of commercial industrial builders that range from a one-man electrical shop to companies that do in excess of \$100 million in construction a year. This is one of those hearings where I would like to have a neutral but really concerned checkbox that I could put my name by because I can't specifically point to places in here at this point. But there's some terminology that interfaces with commercial and industrial construction that's in the new language. And we would ask that, at the very least, we have a chance to go through and make the ties. I believe Section 52-154 and 52-157 go back and forth between both commercial and homeowners. And so didn't have a chance to, you know, go through everything but we have some concerns. Also some definitions that we believe there's some terms that there aren't...they aren't currently defined in statutes. I also was involved many years ago and several times in the interim on redoing the lien laws. They are really tough to put our arms around and to cover every possible scenario that is going to impact an owner whether it's a homeowner or a construction, a small construction company, a large construction company, or a commercial or industrial owner. And if, you know, we need to go back and

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take a look at the entire lien law, I would suggest that a committee of interested parties be put together on an interim basis to review the lien laws in their entirety because the problems that we've had in the past 20 years with the lien laws oftentimes have come from amendments or potential changes that seem innocuous at the time that come back and have some repercussions on a lot more people than intended. So at this point, I'd just urge the committee to move with real caution and give us a chance to respond on the commercial and industrial side. My members work both ways, both homeowners and commercial and industrial. We've been on the lien law...we're just now trying to figure out and understand the existing laws and I'm not sure we're ready to start changing them wholesale again. So I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Further questions, are there any questions? So you're saying that you don't support the bill because you don't quite understand what's in it and yet I understand you to say that you're really concerned if it applies to commercial. You don't want it to apply to commercial and you're not quite sure...it is complicated. It's difficult to read. You're not quite sure if it's appropriate the way it's drafted,...

DICK JOHNSON: Exactly. We...

SENATOR BOURNE: ...if there was one sentence that said, a residential homeowner who contracts with a general contractor and in good faith pays that general contractor shall be exempt from any liens from any subcontractors or the general contractor. If we struck everything and had one sentence to that effect, would that be okay?

DICK JOHNSON: At first blush, yes, but maybe we need to extend the sentence just a little, you know, to protect all of the other people in the food chain on the construction side.

SENATOR BOURNE: You know, I agree there should be some protections but I think the remedy should be with the deadbeat who didn't pay the subs. You know, and by that I mean anyone that gets money from a homeowner and then doesn't...

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DICK JOHNSON: First of all, this is a tough...

SENATOR BOURNE: It is.

DICK JOHNSON: ...issue for us because my 250 members across the state of Nebraska aren't the ones that are creating the problems.

SENATOR BOURNE: I'm sure you're right. I would agree with that.

DICK JOHNSON: And when we take a look at more rules and regulations that are going to burden us even farther, you know, it's...we're not bad contractors and I don't represent bad contractors so.

SENATOR BOURNE: Right, I agree. Are there any questions? Senator Flood.

SENATOR FLOOD: Along the lines of Senator Bourne's proposed language that was proposed or not. What if it, then the next sentence said this section shall not apply to essentially commercial real estate improvements. Going a step further and specifically identifying.

DICK JOHNSON: Well, once again, when you start working with definitions, Senator, a beauty shop in a homeowner's house is considered commercial. And, you know, a dog trimming business, whatever it might be, all of a sudden, you know, we become...that's the reason...let's let the lien law live the way it is (laughter). You know, it may not be perfect but if we're going to open it up we have to be real careful how we open it up and maybe it is time to review all of the lien laws. You know, I personally (laugh) don't know that I want to go through that again but I'm here to volunteer to serve at your pleasure if you would like that.

SENATOR BOURNE: Appreciate that. Senator Friend.

SENATOR FRIEND: No, thank you, Senator. I'm fine.

SENATOR BOURNE: Further questions? Seeing none, thank you for your testimony, appreciate it.

DICK JOHNSON: Thank you.

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SENATOR BOURNE: Next testifier in opposition?

KORBY GILBERTSON: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Home Builders Association in opposition to LB 42. Senator Bourne, I'll skip right to your last question that you had for Mr. Johnson and the Home Builders would still have a problem with that simple sentence and statute. And the reason why is if a homeowner has notice that there have been liens filed then they should not be paying the general contractor because, obviously, they have noticed that there is a problem. So, if you, under this scenario, if there is a continuing project going on, the subs file a lien and then subsequently the homeowner pays the general and those liens are excused, those subs have no one to go after. But the homeowner had noticed that there was a problem. So that's one of the underlying issues that the home builders have with this bill. I did talk to Senator Redfield's staff this afternoon and asked them if they would give us a chance to try to come up with some language that might be able to fix this or address maybe the notice issues. The attorneys that I've spoken to that practice in this area feel that this legislation is already taken care of in the existing statutes because the homeowner should be a protected party. And their initial response to me when I said but what happens if these people come and file the liens afterwards? They said, well, they didn't have a very good attorney then. So, that...

SENATOR BOURNE: Therein lies the problem.

KORBY GILBERTSON: Right.

SENATOR BOURNE: For the homeowner.

KORBY GILBERTSON: Exactly. And I agree with that so if there's something that we can do to make it more simple for the homeowner, that's one thing. But I also think we need to protect those subcontractors from the general contractor who walks off especially when the homeowner has notice that there's or have been liens filed by those subs. And I'd be happy to answer any questions.

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SENATOR BOURNE: Thank you. Questions for Ms. Gilbertson? One thing I will say is I have never heard of a homeowner who paid the general contractor who had notice that a sub wasn't being paid. I have never ever heard that.

KORBY GILBERTSON: That's fine.

SENATOR BOURNE: I don't even believe that exists but...

KORBY GILBERTSON: Well, it addresses that specific instance in this legislation, though, so it...

SENATOR BOURNE: No, what you said was the subcontractor who provides notice to the homeowner that he or she isn't being paid should be protected. And what I'm saying is, a person has an addition put on their house,...

KORBY GILBERTSON: Right.

SENATOR BOURNE: ...and one of the subcontractors is a painter.

KORBY GILBERTSON: Um-hum.

SENATOR BOURNE: Then I'm assuming the painter would be the very last subcontractor to go through the building and provide services. And what I'm saying is that money is gone. That money has already gone to the general contractor that generally is paid quarterly or, you know, throughout the project. What I'm saying is, I don't believe for a second that a homeowner who has notice that the sub is going to be paid, just says, oh, okay, I'm going to give more money to the general contractor. I mean, I'm struggling as to...

KORBY GILBERTSON: But in LB 42 it provides for that specific instance.

SENATOR BOURNE: But...okay.

KORBY GILBERTSON: That's, I mean, that's what we're just saying. We're concerned about that language that that could, if that happens it's a problem if they have notice.

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SENATOR BOURNE: Thank you, appreciate that. Further questions? Seeing none, thank you very much.

KORBY GILBERTSON: Thank you.

SENATOR BOURNE: Next testifier in opposition.

RUTH CHERMOK: Senator Bourne and members of the committee, I'm Ruth Chermok, C-h-e-r-m-o-k, executive director of the National Electrical Contractors Association. I appear before you today in opposition but I would share Mr. Johnson's comment. I actually thought of suggesting that I was neutral but in fairness to Senator Redfield because she's always been very fair to us, I thought I should cite at this time that we're in opposition to the bill in the present form as we understand it. We, maybe under a misunderstanding but after review of our counsel and a very quick review, please understand, (laugh) we think that there are in existing statutes a number of provisions and protections for homeowners. We too share the concern of protecting homeowners, particularly from unscrupulous contractors. I kind of wish we were in the room having a discussion about a bill to take care of the unscrupulous contractors and we wouldn't have to be messing with lien laws. And I share Mr. Johnson's view that my efforts to protect contractors have to do with the quality contractors and subcontractors, by the way, that I represent that are concerned that their rights do not just get stripped in some effort to protect homeowners especially if existing statutes take care of it. So I've been in conversations with Senator Redfield and have also pledged to help sort out how it fits and if there's any overlap and what we can do to help her meet her interest. We are highly concerned that everything is strictly centered around residential, that we don't grasp commercial by accident. I guess, at this point, we'd have to oppose until we've had some further review and further review of existing statute as others suggested the lien laws are so very complicated. That it really is hard in a quick review to be sure that you know how it matches up. And with that, I guess, we would just look forward to working with Senator Redfield and the committee to try to make sure that we go slow and we do it right if there's a change that's even needed.

SENATOR BOURNE: Thank you. Questions for Ms. Chermok?

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Seeing none, thank you. Next testifier in opposition?

TERRY KING: Chairman Bourne and members of the committee, my name is Terry King. That's K-i-n-g. I represent the Nebraska Chapter of Associated General Contractors. My members do mostly public works so the lien laws are not very often applicable but we did review this and had some concerns about the language. And so I just wanted to appear and stress those concerns and would chime in or agree with the testimony of the other construction industry people that if there is to be work done on the lien laws perhaps we should do it over the interim and take a comprehensive look at the entire set of statutes. And with that, I'd answer any questions.

SENATOR BOURNE: Appreciate the input. That's what we heard last session. Questions for Mr. King? (Laugh) Thank you.

TERRY KING: Thank you.

SENATOR BOURNE: Further testifiers in opposition? Testifiers neutral. Senator Redfield to close.

SENATOR REDFIELD: I appreciate very much your time. I heard phrases like we don't really understand it, it's been 20 years but let's leave it alone. I think that we need to do something and I think that if we let it lie for another year, there will be homeowners out there that will find to their chagrin that there's a lien on their property. And it may be an elderly citizen who has paid in full for that roof before they even started work and a notice time frame will not help them because, in fact, they've already paid for it. So I think that we need to do something with it. I am more than happy to look at correcting the language. I will tell you that in the section of law there is protected party definition and just by the insertion of that particular phrase in the language of Section 11 it may limit it more carefully and you may look at that. But I would be happy to work with the committee on limiting its scope but I hope that we move forward on it. We heard a lot of trouble back in the seventies from the Highlands and we're still hearing today from Neighborhoods, Inc. and other groups that they have suffered this. And so we haven't solved the problem yet and I hope we don't wait another 20 years. Thank you.

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SENATOR BOURNE: Thank you. Questions for Senator Redfield?
Seeing none, thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: That will conclude the hearing on LB 42 and we will now open the hearing on LB 151. Senator Mines. Could I get a show of hands of those individuals wishing to testify in support of LB 151? I see one, I see two, three. Would you make your way forward to the on-deck area? Could I get a showing of hands of those individuals to testify in opposition to LB 151?

_____: Senator, is LB 104 up next for hearing?

SENATOR BOURNE: My agenda reflects LB 104 is the sixth bill. And I think that was posted outside on the door. I'm sorry. Could I get a showing of hands of those individuals wishing to testify in opposition to LB 151? (laughter) I see three proponents, no opponents. Senator Mines to open. Welcome to the committee.

LB 151

SENATOR MINES: (Exhibit 4) Chairman Bourne, thank you very much. I appreciate it, members of the committee. My name for the record is Mick Mines, M-i-n-e-s, and I'm the primary introducer of LB 151 and I represent the 18th Legislative District. This bill is being introduced, LB 151 is being introduced because it was brought to my attention by Mary Vandenaack. She's a partner at Abrahams, Kaslow and Cassman. Mary's focus in her practice is in the area of tax planning, business organizations and transactions, estate planning, and trust administration. And the bill first, a little bit of background on it. Medical savings accounts allow individuals to pay for current health expenses and save for future qualified medical expenses, medical and retiree health expenses on a tax-free basis. What LB 151 would do is grant an exemption from the claims of creditors pursuant to garnishment order, bankruptcy, or action involving the attachment of a monetary judgment to debtors' assets for monies contained within such accounts. Very simply, this bill would allow an individual who filed bankruptcy to not have the funds in their medical savings account attached as

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assets as long as these funds are used for qualified medical expenses. Now there's an exception in the bill that's carved out and there's an exemption to allow these funds to be attached in the case of judgments for medical expenses against the medical savings account holder or his or her dependents. I'm also offering, passed out an amendment to this bill today that would also include health savings accounts as well as provided for a definition of qualified medical expenses. Mary and her colleagues at Abrahams, Kaslow and Cassman drafted this amendment. Bill drafters has refined it. Just for general information, a health savings account, it's a more recent development created by the Medicare bill signed in 2003. Unlike a medical savings account, both workers and their employers can contribute to the health savings accounts. Patients can use these accounts to pay for medical needs without being taxed even after retirement. In this instance, you own, you control these monies and your decisions on how to spend the monies made by the party without relying on a third party to help insure. Following me today, Mary Vandenack and Nick Dafney are here. Nick is, by the way, an associate with Abrahams, Kaslow and Cassman and his focus in his practice is on creditors' rights, bankruptcy, corporate and business law and estate planning as well. And they can provide additional information or technical information on the bill. It's a practical sense solution. If one files bankruptcy, your medical savings or health savings account cannot be attached as an asset and can be used for medical purposes as it's initially intended. With that, I'll answer any questions.

SENATOR BOURNE: Thank you. Before I ask for questions for Senator Mines, I want to notify the audience that we are going to make an adjustment in our schedule. My son is 12 and I forget that he was at one time an infant. So we're going to do LB 104 next after LB 151. And if you could change the agenda outside to reflect that, I would appreciate it. And, again, I apologize to the moms for my oversight. Are there questions for Senator Mines? Seeing none, thank you. First testifier in support of LB 151.

NICHOLAS DAFNEY: (Exhibit 5) Good afternoon, Senators. My name is Nicholas Dafney. As Senator Mines said, I'm an associate at Abrahams, Kaslow and Cassman. And we did bring some written materials that I would like to pass out to you

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before I start. Like Senator Mines had said, we had contacted his office because this issue was coming up in our practice at Abrahams, Kaslow, and we had spoken with other attorneys in Omaha that we knew that it was coming up with them too. In my comments there in the handout, I talk about three different situations where this is coming up. It originally came up with one of our banking clients who was looking into open these new health savings accounts that went into effect last year. There's a lot of uncertainty on all sorts of levels on these things but the one that they were grappling with before they wanted us to start opening these accounts for their customers was if they were owed money by the people who opened these accounts or if they received garnishment orders, what were they to do with those funds? Were those funds subject to garnishment or could they have set amounts owed to them with these accounts? We've also had creditors. We've represented creditors who have gotten judgments and they are carried out, you know, through a debtor's exam or otherwise. You find out that these people have money in medical savings or money in a health savings account. And we didn't know whether we could execute on those judgments personally in representing these creditors. And then the third example is I've been in contact with some of the debtors' attorneys there in Omaha and when they fill out the schedules upon filing a bankruptcy for an individual, you're supposed to list the exemptions available, you know, homestead and things of that nature. And they were unsure as to whether these medical savings accounts or health savings accounts were exempt, there was an exemption. I guess that's where we came in and we really were here on more of a clarity issue. We're in favor of it but it's really a clarity issue from a legal perspective. It's these three have come up real recently and there's no reason for us not to think it's not going to be coming up more. With that, I guess, I'd address the changes that we made to the original bill. There was two changes we made. We added the health savings accounts because they're becoming much more prevalent since coming into effect in January of 2004, and they've got some benefits that make them better in most people's view than the medical savings accounts so we wanted to include those. And then the only other change we made was, as Senator Mines said, there's an exception where if somebody gets a judgment against them for a medical expense, we saw that term medical expense standing alone and maybe bringing about a bunch more

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litigation as well, what's a medical expense? Who has a qualifying medical expense? So we changed it to define that as a qualifying medical expense exception and reference the Internal Revenue Code definition section for what it's worth. It at least provides some guidance so, to avoid that kind of litigation. So those are the real big changes that we did. You know, adding health savings accounts and defining medical expenses so that they're more easily defined and we can avoid a bunch of litigation over that as well. As you'll see in the packets, we provided additional information on health savings accounts and medical savings accounts in general, just some background information that my colleague, Mrs. Vandennack will talk about a little bit more. Other than that, I'd be happy to answer any questions you have.

SENATOR BOURNE: Thank you. Questions for Mr. Dafney? Seeing none, thank you. Next testifier in support?

MARY VANDENACK: Mary Vandennack. I am a partner at Abrahams, Kaslow and Cassman and I am...

SENATOR BOURNE: Could you spell your last name for...?

MARY VANDENACK: I'm sorry. V-a-n-d-e-n-a-c-k.

SENATOR BOURNE: Thank you.

MARY VANDENACK: Mostly what I have to say is actually in the packet so that I was just going to introduce you guys to what we provided. In the packet, we gave you copies of both the statutes for the medical savings account and the more recent health savings account. Then just some comments. There's a list in here of what would fall under the category of qualified medical expenses so that that would clarify why we thought a definition would help so that would be what would qualify to be paid for out of those accounts. And then just some information on who actually files bankruptcy which is the unemployed who are often uninsured or have lost their insurance as a result. And a lot of times that's the result of illness and there's just some stuff in there that kind of supports that concept. And that's all I have unless you have any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Vandennack?

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Seeing none, thank you very much. Next testifier in support? Testifiers in opposition? Testifiers neutral. Senator Mines to close.

SENATOR MINES: Thank you, Mr. Chairman. This is a common-sense bill. It protects medical and health savings accounts from attachment in time of bankruptcy. And since these are reasonably new programs, it just makes sense to protect those assets for those that need them and I would urge your passage on to General File. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Mines? Seeing none, thank you. That will close the hearing on LB 151. And as I mentioned, our schedule has been slightly modified. Senator Thompson is here to open on LB 104. Welcome to the committee.

LB 104

SENATOR THOMPSON: (Exhibit 6) Thank you. Thank you, Senator Bourne. For the record my name is Nancy Thompson. I'm from LaVista representing District 14 and I appreciate your moving this bill up so that young families who came to testify will be able to move on...

SENATOR BOURNE: Well, and I apologize for my oversight. I didn't consider it. I'm sorry.

SENATOR THOMPSON: That's okay. Thank you very much. This bill came to my attention at a meeting of a group of physicians and I was kind of surprised to know that Nebraska hadn't put in place language that makes it clear that women can take care of feeding their babies in public places. The language that we used for this bill is essentially the same language as Iowa, Colorado, Missouri, Oregon, Indiana, and Vermont use. And there are 32 states that have this in place. I think it's just something that makes sense. Probably we're the only country in the world where this would even be discussed. It's a very important thing to encourage, it's good for babies and the people and moms and the people who will testify in that regard from the physician community and I don't know who else may be here to testify. We'll certainly talk to those issues. But this is about putting in our statute, making it clear that this is

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not something that could be in any way, I'm not even saying that it would be, brought to any kind of legal position on indecent exposure or public nudity, those kinds of things. It's being proactive and making it clearer so that women have that comfort level of knowing that they can feed their babies when they're hungry.

SENATOR BOURNE: Great. Thank you for...thank you, it's been a long week. Thank you. Questions for Senator Thompson? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Senator Thompson, is there any history of prosecution for this in this state?

SENATOR THOMPSON: Not in this state. It has come up in other parts of the country. There have been situations...I think we're just trying to be clear that it is permissible; it's proactive. And I have a couple of articles that I'm going to leave with you that I thought really defined the issue well. These are both nursing mothers, Rainbow Rowell in the Omaha paper and another article from Cindy Lange-Kubick and it was in the Lincoln paper that I think express this from a young mother's point of view. And I'll just leave those with the committee.

SENATOR BOURNE: Thank you. Are there further questions for Senator Thompson? Senator Thompson, let me ask you a quick question. Now, this is a statewide law? I mean, is there...could you make an argument maybe that we should leave this up to local communities? (laughter)

SENATOR THOMPSON: (Laugh) I think this is statewide.

SENATOR BOURNE: Statewide.

SENATOR THOMPSON: I didn't realize that there are some places that have ordinances on this. This to me is just very common sense, human pro health, pro public health, pro health of babies issue...

SENATOR BOURNE: Thank you.

SENATOR THOMPSON: ...which I believe other issues would indicate that too.

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SENATOR BOURNE: Thank you. Nice to see you in the committee.

SENATOR THOMPSON: Thank you.

SENATOR BOURNE: Can I get a show of hands of those individuals wishing to testify in support? I see four, five. Are there any in opposition? Are there any neutral testifiers? Would the first proponent step forward and, again, we're using the on-deck chairs and signing in.

LAURA WILWERDING: Yes.

SENATOR BOURNE: And if you would again state your name and spell it for the record. Thank you.

LAURA WILWERDING: Well, I'm Dr. Laura Wilwerding. I am actually the one who brought this bill to Senator Thompson. I am a pediatrician and a mother of four and so I come on behalf of myself.

SENATOR BOURNE: Could you spell your name for us, please?

LAURA WILWERDING: Yes, W-i-l-w-e-r-d-i-n-g.

SENATOR BOURNE: Thank you.

LAURA WILWERDING: So I come on behalf of myself and also as the state coordinator, the Nebraska state coordinator for breast-feeding for the American Academy of Pediatrics. And as a pediatrician and mother of four, I obviously have a lot of information and knowledge about the importance of breast-feeding. And I want to emphasize that this bill is not merely a children's issue. It's not merely a woman's issue and it is not merely something that is just politically correct. It's a societal issue both with an impact on public health as well as even financial benefits for individuals, corporations, on state and local governments as well as the federal government. In response to it being a children's bill, obviously, breast-feeding does benefit individual children. There's all sorts of research that shows the benefits in terms of health, growth, development, and immune response. It decreases the risk of death. In fact, breast-fed babies are 20 percent less

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likely to die and in a state where our infant mortality is unbelievably high for a developed country, that is something that we absolutely need to encourage women to do. Also, it reduces death from Sudden Infant Death Syndrome, respiratory infections and diarrheal illnesses. UNICEF actually has said that if women would breast-feed for six months we could save 1.3 million child's lives a year globally. That's a lot of lives. We're not talking the sniffles. We're not talking ear infections. We're talking dead babies. In addition, breast-fed babies are less likely to develop chronic diseases like diabetes, leukemias, as well as being less likely to become obese adults which is a huge issue in our country. Breast-feeding also does benefit individual mothers. Faster prepregnancy weight, increased child spacing, decreased risk of certain cancers, ovarian and breast, reduced risk of breast cancer. It benefits society, includes reduced health-care costs, reduced government spending on women, infants' and children's supplemental feeding programs, reduced employee absenteeism, et cetera. There are currently 36 states that have some breast-feeding legislation. In our state we have exemption from jury duty but that's it. It isn't enough to promote breast-feeding if women aren't able to live normal lives including working, running kids around. They shouldn't be relegated to bathrooms or find a place that's a mother's room because they're few and far between. And the notion that people don't want to see breast-feeding women in public is somewhat ironic in a society where women's bodies are promoted through clothing and calendars, magazines and billboards. It's really difficult to understand this uneasiness. Obviously, it is not breasts that people do not want to see but they do not want to see the nonsexual image of a lactating and functional breast. With all this that we know, this hang-up of a minority of people should not and cannot impede progress in supporting breast-feeding. The goal of this and related legislation is to recognize the medical importance of breast-feeding, to remove societal barriers to successful breast-feeding and sustained breast-feeding, and ultimately to make breast-feeding the cultural norm in the United States as it is in the majority of the world.

SENATOR BOURNE: Thank you. Questions for Dr. Wilwerding?
Seeing none, thank you.

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LAURA WILWERDING: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support?

SARA DODDER FURR: Hi, my name is Sara Dodder Furr. It's S-a-r-a D-o-d-d-e-r F-u-r-r. And I'm here as a La Leche League leader. My role as a La Leche League leader is that I lead breast-feeding support groups for nursing mothers, pregnant mothers, and I have actually heard many mothers report incidents where they were made to feel uncomfortable breast-feeding in public. And I realize...I don't think in Nebraska there's been any case where a mother has been arrested for indecent exposure but from my point of view it's more to...this bill would allow mothers to have that feeling of confidence that they are protected and that they have something that they can fall back on. There are mothers in Lincoln who have been asked to go into a restroom or go into a dressing room while they're breast-feeding their baby and as someone who would like to see breast-feeding become the biological...it is the biological norm, I would like to see it become the cultural norm. And I would like to see us get breast-feeding rates up to what the federal government is proposing in the Breast-feeding: Healthy Kids' goals. I think this bill would help us get there and it's a great first step. That's all.

SENATOR BOURNE: Thank you. Are there any questions? Seeing none, thank you. Next testifier in support.

ANN SEACREST: (Exhibit 7) Senator Bourne and members of the Judiciary Committee, thanks for this opportunity to testify. My name is Ann Seacrest, S-e-a-c-r-e-s-t, and I live in Lincoln. I'm a registered nurse and a board certified lactation consultant. I'm also the mother of four breast-fed children. In 2001 while I was serving on the Lincoln/Lancaster County Board of Health we passed a breast-feeding initiative for the Lincoln community. And out of that initiative, came a breast-feeding policy for city and county employees. And a community work group called Breast-Feeding: Healthy Kids 2010. And I'm here today on behalf of this work group which includes representatives from the medical community, social service agencies, public health experts, dietitians, teachers, the Women's Commission, breast-feeding mothers, and private

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citizens to encourage you to support LB 104. And about 50 years ago we very innocently started feeding our children something other than human milk. And two generations later, we realize this was not a wise move as Dr. Wilwerding so aptly pointed out. But we know that changing lifestyle habits is very hard and mothers know that human milk is what their babies need. But our community needs to help that by creating an environment that helps to make this happen. Many women that I have worked with, myself included, have been asked to leave public areas because we've chosen to feed our baby when our baby was hungry. And many other women choose not to breast-feed because they fear lack of acceptance. And the nice thing about this bill is it's not going to do anything except create healthier, smarter members of our state and the nice thing for you is you're probably going to end up with some more money to spend on other legislative issues (laugh) if you help make that happen. Okay? I provided a packet of information to each of your offices which I dropped by the other day and there's a brochure of Lincoln's city/county employee policy in there. It's really important that we look forward, also to accommodating women in the work force by accepting their need to pump at work. That's another necessity when it comes to creating an environment. So I'm really hopeful that Nebraska will prioritize the health of its children by supporting this measure. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Seacrest? Seeing none, thank you. Appreciate your testimony.

ANN SEACREST: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

LISA HEREK: Thank you. Good afternoon. My name is Lisa Herek. For the record, I live in Omaha, Nebraska. And...

SENATOR BOURNE: Could you spell your last name?

LISA HEREK: H-e-r-e-k.

SENATOR BOURNE: Thank you.

LISA HEREK: I am a mother of five children, ages two months to twelve years. When I had my first child at age 20 and

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had no support and was virtually ignorant about every aspect of parenting, breast-feeding included, I was at least able to grasp that breast-feeding was in itself a commitment. And then began the challenges. One challenge being that I couldn't always be at home to feed my baby and would need to feed him in public at times. Well, I would take him in public with me and try to feed him. On one occasion I was asked to leave a public restaurant. I was asked to leave Denny's by a member of the management. Well, I have four other children. Last year at an outdoor concert I was harassed by the police for nursing my child. I'm not going to tell you that it didn't strike me as somewhat ironic that there were women flashing their breasts (laugh) at the concert, at the people on the stage less than ten yards away from me, you know. But you put breasts in their proper context and all of a sudden we need legislation to protect it. I'm not a typical breast-feeding mother. I'm not an upper-middle income person. I'm not very educated. But I think that like Dr. Wilwerding pointed out, this is a public health issue. More atypical women will choose to breast-feed if it is legitimized. I don't need your legitimacy; I've already done it. I've done it; this is my fifth child. I think I'm over the hurdle. But there's other women out there who won't do it and that means sicker babies. That means more sick days from work. That means more money spent by women, infants, and children for formula. That means more doctors' bills, more Medicaid bills. I can't think of one negative repercussion for choosing to breast-feed your baby. And I thank you for your kind attention.

SENATOR BOURNE: Great. Thank you. Are there questions for Ms. Herek? Seeing none, thank you. We appreciate your testimony.

LISA HEREK: Thank you.

SENATOR BOURNE: Further testifiers in support.

LANA ERICKSON: (Exhibit 8) Senators, my name is Lana Erickson. Last name is E-r-i-c-k-s-o-n. I live here in Lincoln. I thank you for the opportunity to allow me to testify in support of LB 104. I am the mother of two young children both who I have nursed at home and in public as their hunger and comfort demands. I'm lucky enough to live

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here in Lincoln where a city ordinance protects my right to do that and I haven't experienced any discrimination here in Lincoln or when I nursed my children in public in other cities except for maybe just a few stares or some mumbled unpleasant comments from people who lacked knowledge and understanding. Unfortunately, I have several friends and acquaintances who have shared stories of rejection and discrimination when nursing in Nebraska public spaces. These people sometimes feel the need to pump or to use formula that they really wouldn't want to use in public. It discourages them from wanting to breast-feed and makes them feel uncomfortable with their choices of parenting. While a law shouldn't be necessary to feed a child, discrimination against breast-feeding is real and the rights of mother and children need to be protected. I encourage this committee to take a moment to reflect on the need to protect these rights on a larger scale. As Dr. Wilwerding talked about, the American Academy of Pediatrics suggests that the best nutrition for a baby is to be exclusively breast-fed until six months and to have breast milk as the primary source of nutrition up until at least a year. But economy dictates that a lot of mothers have to go back to work at six weeks or eight weeks or sometimes even four weeks postpartum. The state of Nebraska provides public health nurses and WIC consultants who encourage low-income mothers to breast-feed their children because studies show that babies and mothers will be more physically and emotionally healthy because of it but then we send mothers back to work where they're discouraged or even prohibited from pumping or nursing their child at work. For the first year of my daughter's life I worked for the state, for Health and Human Services, and my supervisors were really supportive of my choice to breast-feed and to pump at work so that I could feed my children in day-care but I still struggled to find the facilities to do so. Some of my coworkers within HHS and in other state departments have shared stories with me of their struggles with unsupportive supervisors and in one mother's case even the prohibition of leaving the workplace to nurse their child in a day-care that was across the street. Right now I work part-time for a breast-feeding center here in Lincoln called Milk Works where I receive calls regularly from mothers who have experienced a workplace ultimatum. You keep your job or you nurse your child. Senators, I ask that you consider passing this quickly to General File but also that you consider an amendment that would expand this

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bill to encourage the workplace rights of women. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Erickson? Seeing none, thank you. Are there further testifiers in support? Are there testifiers in opposition? Neutral testifiers? Senator Thompson to close. Senator Thompson waives closing. That will conclude the hearing on LB 194 (sic) and we will go now to...excuse me, LB 104. Come on, my agenda change. We're going to now because we juggled the agenda to accommodate the kids, we're going to go with Senator Hudkins to open on LB 173. Welcome to the committee.

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SENATOR HUDKINS: (Exhibits 9, 10) Okay, good afternoon, Senator Bourne and members of the Judiciary Committee. For the record, my name is Carol Hudkins and I represent the 21st Legislative District. Today I am presenting LB 173 which would change the way in which gift certificates, gift cards, and credit memos are determined to be abandoned and escheat or revert to the state. The goal of the legislation is to amend the current law in a way that will be beneficial to consumers and retailers alike. Consumers don't like expiration dates or post-sale fees and retailers don't like the way that the abandoned property laws now work with regard to gift certificates. LB 173 addresses this problem by providing an incentive for retailers not to utilize expiration dates on gift certificates. It basically says to retailers, if the gift certificates that you issue don't have expiration dates or post-sale fees or if you voluntarily waive such restrictions then you don't have to worry about them ever reverting to the state. To give you a brief background on this bill, last year a constituent approached me with a problem involving a gift certificate that expired when she had a serious illness that prevented her from using it. In looking into the abandoned property laws I found that Senator Bourne had addressed this same issue in 2002 which would have made it unlawful to sell a gift certificate containing an expiration date. Last year I introduced a bill which took a similarly hard line by saying that an expiration date on a gift certificate was automatically void. This year's bill, LB 173, is a kinder and gentler type of legislation that doesn't force retailers

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to do anything but instead provides them with an incentive to do what is ultimately in the best interest of all parties concerned. The bill makes both minor and major revisions to the statute dealing with gift certificates and credit memos as abandoned property. The bill updates the language to include gift cards since debit-like cards are becoming more commonplace. We also changed the way in which the value of an abandoned certificate or card is determined. Currently, this is based solely upon the face value of the certificate. This bill says that the value would be based on the face value minus the amount of any applicable purchases. Currently, any gift certificate or credit memo is presumed abandoned if it remains unredeemed for more than three years after it is issued. My bill would include an additional requirement for a presumption of abandonment. A gift certificate, card, or credit memo would also have to contain an expiration date or require a post-sale finance charge or fee. I'd like to offer an amendment to the bill. This amendment strikes subsection c of the bill altogether. That section created a way for gift certificates and cards with expiration dates or fees to avoid going to the state. And the more I thought about what we're trying to accomplish with this legislation, the more convinced I became that the section served no purpose other than to make the bill more confusing. So under my new and improved version, the gift cards, the gift certificates, and credit memos with expiration dates or fees would revert to the state after three years. Then they would go into the unclaimed property. Those without expiration dates or fees would remain valid forever. This bill is an attempt to please as many people as possible when it comes to those who use and issue gift certificates. Retailers will like the bill because it offers a carrot not a stick by giving them the option of doing what is necessary to prevent the state from claiming their gift certificates as abandoned property. Likewise, consumers should like the bill because it creates a situation in which few retailers in this state will continue to use expiration dates. With that, I thank you for your time and will respond to any questions that you have, however, reminding you that there are people following me who have all of the answers (laughter).

SENATOR BOURNE: Thank you, Senator Hudkins. Are there questions? Seeing none, thank you.

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SENATOR HUDKINS: Thank you.

SENATOR BOURNE: Can I get a show of hands of those individuals wishing to testify in support? Three? Those opposed? Those neutral? One. Would the first proponent testifier come forward and Ms. Siefken, we're going to make use of the on-deck chair so if you'd make your way to the front of the room, please. Welcome.

MICK VANDE GRIEND: Good afternoon. My name is Mick Vande Griend, V-a-n-d-e G-r-i-e-n-d. I drove in this morning from Sidney, Nebraska, to speak on behalf of my employer, Cabela's, the world's foremost outfitter. I'm employed there as in-house legal counsel. Cabela's is probably the single largest issuer of gift certificates and gift cards in the state of Nebraska. LB 173 has the full support of Cabela's. As a national retailer, we depend on the support of our customers and, therefore, we make a point to look out for their best interests in everything we do. LB 173 protects the interests of our customers by encouraging all retailers to eliminate the expiration dates and dormancy fees on gift certificates and gift cards. Now traditionally, we have honored all gift certificates and gift cards until the time that we're forced to report them to the state as unclaimed or abandoned property. In addition, we've always refused to charge dormancy fees so in many ways LB 173 won't change the way Cabela's does its business. However, we routinely have customers who attempt, customers from Nebraska who attempt to redeem their gift certificates either through our catalog or our Internet channel or retail sellers in Kearney and Sidney. And we have to turn them away and tell them that they have to go to the state to claim their property because we've been required to report that gift certificate as abandoned property because it's more than three years old. LB 173 will allow our Nebraska customers to redeem their gift certificates with Cabela's forever and indefinitely and this will eliminate the hassle that escheatment causes for both us and our customers. And, finally, and most importantly from my perspective, our research indicates that LB 173 is consistent with the direction that other states are heading on this issue. Several other states, most notably including California, Washington, and Illinois have recently passed legislation which either encourages or requires retailers to do away with both dormancy fees and expiration dates. And

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there are quite a few states right now that have legislation pending that would accomplish similar goals. So passage of LB 173 would enhance uniformity among the state's laws in this regard and as you can understand, I'm sure, uniformity and administrative simplification is something that legal counsel will always appreciate. So in summary, Cabela's believes LB 173 strikes a fair balance between the interests of consumers and retailers and that's why we support it. Thank you.

SENATOR BOURNE: Great. Thank you. Thanks for coming clear from Sidney.

MICK VANDE GRIEND: You're welcome.

SENATOR BOURNE: Are there questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Did you bring a catalog with you? (laughter)

MICK VANDE GRIEND: I'm sorry. I didn't. I may have one in my trunk that I forgot about but it's not a new one.

SENATOR BOURNE: I have a quick question and...

MICK VANDE GRIEND: Sure.

SENATOR BOURNE: ...maybe you can just provide some clarity. I thought I heard during your testimony you said, it will allow Cabela's to continue to redeem that gift card indefinitely?

MICK VANDE GRIEND: Yes.

SENATOR BOURNE: Oh, I'm a little confused then because as I read the bill, it still indicates that it shall be presumed abandoned after three years? Or am I...?

MICK VANDE GRIEND: That's not the way I understand the bill.

SENATOR BOURNE: Okay.

MICK VANDE GRIEND: The way I understand the bill is if you don't include an expiration date and if there's no dormancy

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fee charged on the outstanding balance of the gift certificate then it will be exempt from the definition of abandoned property, meaning that you will never have to report it but you have to continue to honor it forever which we do anyway and we're prepared to do so I think in that sense, it benefits both the retailer and the customer. The retailer, obviously, would prefer that the customer uses the gift certificate at the store rather than reporting it to the state where it's no longer a gift certificate and the customer, if they find that gift certificate in their sock drawer ten years down the road can still go to the store and use it.

SENATOR BOURNE: Okay. And you indicated that Cabela's does not use the financing fee. Some retailers after 12 months they start hitting...

MICK VANDE GRIEND: Yeah, actually...

SENATOR BOURNE: ...3 percent a month or something. You...

MICK VANDE GRIEND: Absolutely.

SENATOR BOURNE: ...you don't do that.

MICK VANDE GRIEND: We never have. I think people within the company have tossed around the idea of it but it's something that we've been divided on and, actually, as legal counsel it would be my advice to us that we never go down that road because as a national retailer we have to comply with the state laws in all 50 states. And there are already a number of states out there that are passing legislation or that have passed legislation which severely restricts the ability to charge dormancy fees and provides generally severe penalties if you don't do it appropriately so I don't think we'll ever go down that road but...

SENATOR BOURNE: So you wouldn't be opposed if there was a prohibition of post-sale financing charge or fees then?

MICK VANDE GRIEND: We would not.

SENATOR BOURNE: Okay, all right. Any further questions? See none, thank you.

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MICK VANDE GRIEND: Thank you.

SENATOR BOURNE: Again, thanks for making the trip down. I know it's a long drive. Next testifier in support?

KATHY SIEFKEN: Chairman Bourne and members of the committee, my name is Kathy Siefken. Kathy with a K, Siefken is S-i-e-f-k-e-n. I'm the executive director and lobbyist for the Nebraska Grocery Industry Association and we're here today in support of this bill. We like it for...the main reason we like it is because of the flexibility. We have, in the state of Nebraska many different sizes and types of stores and one size doesn't fit all. We have different types of gift certificates and cards and script that our grocery stores make available to either customers to purchase or to charity groups like churches that come in and purchase and then they use it as a fund-raising mechanism. The flexibility that we see in this bill is simply that if there is a post-sale finance charge or maintenance fee, what that really leans toward are those grocery stores that have the plastic gift cards that you swipe with the mag stripe on the back and it keeps track of the balances. The post-surcharges or the maintenance fees on those cards after they haven't been used for awhile, those charges are charges that are taken by third party processors. Without those fees then those cards are going to go away and we won't have those plastic cards in the state of Nebraska anymore. That's my concern. If you take away the incentive for people to make money, they're not going to do it anymore. The paper gift certificates or the script, we've got some stores that have expiration dates on them; some that don't. I've never heard of a grocery store yet that has had a gift certificate brought back to them and they haven't redeemed it. And so what this does is it gives people flexibility. If you're using the plastic card, you can continue to offer that card to your customers and the card won't go away because third-party processors won't stop offering that type of a product to our members. And those people that have the paper gift certificates, they can either put an expiration date on it or they can decide not to put an expiration date on it and go from there. We do like Section c(2) where if you have been putting an expiration date on your gift certificate and you decide that with this new law, you would like to get rid of all gift certificates what that would allow us to do is the store

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that was putting the expiration dates on would then be able to treat all gift certificates the same and redeem all of them. And none of those funds would escheat back to the state. So with that, if you have any questions I'd be happy to try to answer them.

SENATOR BOURNE: Thank you. Questions for Ms. Siefken? Seeing none, thank you. Next testifier in support.

JIM OTTO: Senator Bourne and members of the committee, my name is Jim Otto, O-t-t-o. I'm executive director of the Nebraska Retail Federation and a registered lobbyist for the retailers and also a registered lobbyist for the Nebraska Restaurant Association. And I appear on behalf of both in favor of this bill today. To just be very brief, Senator Hudkins gave you some information on how much gift cards are growing. And I really kind of emphasize gift cards more than gift certificates because gift cards, the electronic card that Kathy referred to, that is growing very, very large. In fact, the estimates is that last year the holiday sales were at least 8 percent, maybe as high as 10 percent gift cards. And so that was...actually a big deal during the holiday sales that maybe holiday sales weren't as good. But if you add on the gift cards they were better because the merchant doesn't actually register the sale until the gift card is redeemed so if 8 percent of the gifts given at Christmas were gift cards then that would actually subtract from holiday sales and those sales would come in after the holiday. But the point is, they're growing very, very fast. Fifteen percent of all people that buy gift cards spend more or actually go do business at a new store that they hadn't done business at before because of the gift cards. Fifty-three percent of the people spend more than the value of the card. It's a tremendous tool not just for...to reach out to customers and it's a very customer-friendly tool. So retailers want customers to use the gift card. I want to make sure that no one...it's not really to the retailer's advantage that the customer never uses the gift card. They want them to use the gift card. I tried to get the number of gift cards that are actually redeemed and I was trying to get some specific numbers on that, and I wasn't able to. I was just told that in excess of 90 percent of gift certificates and gift cards are redeemed. I would point out to you also that if you...just think about, if you have a gift card in your wallet or if you have a gift certificate

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in a drawer and you forget about it and you go through the drawer after a year. If it has an expiration date on it, most people are going to pitch it because they don't recognize that there is an escheat law in the state of Nebraska that it would still have to be made good and they could get their money from the State Treasurer. Most people are going to pitch it. If we eliminate expiration dates and we eliminate dormancy fees, it will be to the advantage...I would say that many more gift cards would be used because you wouldn't pitch it. You would use it once you found it and discovered it. As far as dormancy fees and your reference to them, Senator Bourne, most...dormancy fees are more prevalent among bank-issued gift cards than they are among retailer or restaurant-issued gift cards. Now I don't say that no retailer charges them but they are much more prevalent among bank...I'm talking about like a Visa gift card or something like that, than they are among retail gift cards.

SENATOR BOURNE: Thank you. Questions for Mr. Otto?
Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Otto, what you just brought up kind of intrigued me a little bit when you talked about somebody pulls that card out of their drawer and they realize that it's expired. They're going to pitch it. This is a public relations problem and they might still pitch it after we pass a law like this if we did. I mean, isn't it a PR issue now because, frankly, if I wasn't in the Legislature six months from now we pass, you know, this bill. I mean, everything becomes law, if I don't read the paper I still throw it away. I mean what...I'm not sure we're gaining anything...

JIM OTTO: Well, my point is, Senator, wouldn't the fact that you wouldn't throw it away if you thought it was still good, in my opinion. If you read on there that it has an expiration date, you might throw it away because you no longer think it's good. If we no longer have the expiration date on there, you would tend to think it's still good and still use it.

SENATOR FRIEND: Well, and there was a method to my question. So what...pointedly, what you're saying is you do want the language from 14 to, you know, 26 to still be

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included then, lines 14 through 26...

JIM OTTO: I'm not sure exactly. Are you saying about...the Nebraska Retail Federation is totally in support of the bill with the amendment, taking that out...

SENATOR FRIEND: Oh, okay.

JIM OTTO: ...because we feel that it offers a carrot, not a stick. In other words, as Senator Hudkins says, gives the retailers an incentive to take the expiration date away but not a requirement. They can still do business as they presently do if they want to.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Thank you. Further questions? So, Mr. Otto, so the information that Senator Hudkins passed out, she cites a survey done by U.S. Senator Charles Schumer from New York. And he talks about a study, saying that many merchants automatically deduct as much as \$2.50 a month from gifts, beginning as soon as six months after they are purchased. The senator warned New Yorkers that to spend gift cards quickly because monthly fees can add up to 67 percent of the card's value after less than a year and a half. Are you talking about...is he talking about merchant cards there or the bank, the Visa cards that you talked of?

JIM OTTO: I'm sure he is talking about some merchant cards but in most cases he is talking about bank cards. And I could get you...I do have somewhat of a list of which merchants actually charge, which national retailers actually charge dormancy fees and which ones don't. But it's becoming more and more of a trend not to charge them so.

SENATOR BOURNE: Do we have information indicating how much of the \$17.24 billion a year in gift cards, how much is reduced from that amount in the maintenance fees or dormancy fees?

JIM OTTO: I don't have that now. I could certainly try to get it for you. I could try to get it for you. I don't know for sure if it's available, but I could try.

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SENATOR BOURNE: Thank you. Further questions? See none, thank you.

JIM OTTO: Thank you.

SENATOR BOURNE: Next testifier in support?

ROBERT HALLSTROM: Senator Bourne, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business. That's H-a-l-l-s-t-r-o-m. Without being redundant, I think the small business owners are supportive of Senator Hudkins' somewhat unique approach to provide the carrot rather than the stick in terms of not having the property be presumed abandoned if you don't either include an expiration date or charge any type of dormancy fee. It's been our experience that people when they find these things after a number of years, Mr. Otto suggested they could pitch them if they have an expiration date on them. If that's not the case, as the bill would provide some incentives for, I think it's more likely that you have a situation where those people would prefer to be able to go to the source. In other words, where they purchased the gift card or where the gift card is redeemable rather than having to go through the unclaimed property process. As good a job as the state treasurer may do in administering that program, I think most people would still prefer to be able to go and redeem it and if because of the incentive provided that those cards remain good and effective, they'll be better served to be able to go back to the store, perhaps do some additional business at the store beyond the gift card value and we think that's a positive thing. Be happy to address any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Hallstrom? Mr. Hallstrom, as I read the bill, there is no expiration and there would be no expiration on the card so a consumer could use it forever and there's no requirement that the retailer submit money to the state.

ROBERT HALLSTROM: That's the way...it reads a little bit awkwardly as I think you were pointing out but it says, no gift cards shall be presumed abandoned provided you don't do one of these two things.

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SENATOR BOURNE: Okay. So if everybody was as good a retailer, in my opinion, as Cabela's the only person or any that would be hurt under this bill would be the state. But in a situation where businesses charge dormancy fees or maintenance fees or whatever, in my opinion, both the consumer and the state would be hurt. And the only winner would be the retailers or that entity that issued the gift card. Is that a fair characterization?

ROBERT HALLSTROM: I don't know if you can paint with quite that broad a brush. I think Kathy Siefken pointed out the issue that there are certain types of cards with the advent of technology and so forth that there are processing fees and so forth that have allowed technology to bring forward the convenience of the different types of electronic transactions opposed to the traditional paper script that you have in terms of gift certificates. So I think there's probably some elements there that are inherent cost-driven factors in the mere introduction of those types of gift cards into the stream of commerce that I think have to be taken into consideration.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

ROBERT HALLSTROM: Thank you.

SENATOR BOURNE: Further testifiers in support? Any testifiers in opposition? Neutral testifiers? Welcome.

RON ROSS: (Exhibit 11) Thank you. Well, good afternoon, Chairman Bourne and members of the Judiciary Committee. For the record, my name is Ron Ross, R-o-s-s. I'm the State Treasurer and I'm here to testify in a neutral capacity on LB 173. As State Treasurer, one of the business units I oversee is the unclaimed property division which has a variety of statutory responsibilities relating to holders and owners of abandoned property. Gift certificates are just one type of property that gets turned over or reported, as we call it, as being abandoned. When someone purchases a gift certificate from a retailer the person who has the right to redeem the certificate is called the owner of the property and the retailer is called the holder. By statute as it is now, regardless of whether the certificate has an expiration date written on it, three years after the

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certificate has been sold, the issuance date, if the owner has not presented the certificate to the retailer, the amount paid to the retailer must be turned over, reported to us as abandoned property. The statute says it is presumed abandoned. The retailer sends us what is called a holder report which includes the amounts of each certificate and a listing of information about the owner of each certificate. We then post the owner's name on our unclaimed property website and every March we publish the names of the owners in the newspaper. In the meantime, the funds are held in a trust fund and invested in the short-term investment pool. As of June 30, 2004, there was \$11.5 million in this fund. If the owner of the property, in this case, the person who had the right to redeem the original gift certificate makes a claim, we pay them the amount they are entitled to. There is no limitations period on when a claim must be made. If the owner fails to make a claim the money does not go back to the holder, in this case, the retailer who sold the gift certificate but, instead, the law requires that the unclaimed property is held in trust. Each year several million dollars escheat to the state and we are directed by statute to transfer those funds to the permanent school fund. Our total of all holder reports for fiscal year 2004 was a little over \$14 million and for the same time period we paid \$5.6 million in claims made by owners. Of the \$14 million reported to us last year, a little over \$80,000 was identified as coming from gift certificates. So even though we indicated to the fiscal office that this bill would have no fiscal impact on our office budget there would be a relatively small loss in interest income to the trust fund on that \$80,000 if it was no longer required to be reported. At the current short-term investment pool rate of about 3.8 percent, that amount would be approximately \$3,000 per year in lost interest to the fund. I believe that statutes need to be clear and concise. If you change the current law to where retailers do not have to recognize gift certificates as abandoned property and you and I know that this is some serious money to retailers since a lot of people lose their gift cards then Nebraska law should say that a retailer may offer a gift card but only if there is no expiration date and no expiration date on the card and that there are no monthly service fees. So what's wrong with being fair, upfront, and transparent?

SENATOR BOURNE: Thank you, Treasurer Ross. Are there

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questions? Let me ask you this. You said that the \$5.6 million the state saved was given in unclaimed property and that would include everything, I mean all... Okay, \$80,000 was identified as coming in from gift certificates. When I look at the information handed out by Senator Hudkins, it seems to me that while I realize these are kind of hard to compare, it seems like gift card purchases are a significant part, at least of one's holiday gift giving. And when I look at \$5.6 million going to the state in unclaimed property and only \$80,000 of that \$5.6 million is identified as coming from gift certificates that's an infinitesimal amount, percentage-wise. But yet you look at the information she provided us, it sounds like gift cards are a huge part of a person's buying habits. So I guess what I'm asking is, are all these expired gift cards held by businesses now being turned over to the state? Are they or aren't they? And do you have a mechanism by which to seek them out?

RON ROSS: There are retailers and we see money coming in from certain retailers like Cabela's, like the Buckle, like Nebraska Furniture Mart and they send us holder reports on a very regular basis. So my best guess is they're on top of that and when the three years is over, they're sending that money to the state. I think the records would show there's a lot of retailers that aren't sending us holder reports so one would wonder if there isn't some money there that should be escheated to the state. I have requested in my budget coming up a little compliance audit, dollars, not a lot but a little because I do believe that not only retailers but all kinds of businesses in Nebraska are not turning abandoned property over to the state. And I believe that the state needs a little bit of a watchdog to make sure that people know that the opportunity is there for us to go out and look.

SENATOR BOURNE: Do you have any estimates on what you think is not being turned in that should be?

RON ROSS: Well, you know, on a national level they think that there's about \$45 billion a year give or take...

SENATOR BOURNE: Million?

RON ROSS: ...billion in gift...

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SENATOR BOURNE: Oh, a billion.

RON ROSS: ...in gift certificates and, you know, I got some studies and I can turn them over to you, saying that somewhere around \$4 billion to \$5 billion of that is not redeemed. So I don't know how to take that number and turn it back into Nebraska but there's a number there and it's a big number. Again, I can certainly understand and as previous testimonies have said, the wave is to take this...gift certificates and not make it abandoned property but just leave it with the retailers. But also then for the retailers to continue to accept cards when they come up and not to have a monthly fee. That is the way the country is going. Many states have passed that law. I think it's good for both the consumer and for the business.

SENATOR BOURNE: Thank you. Further questions? See none, thank you.

RON ROSS: Thank you.

SENATOR BOURNE: Appreciate your testimony. Further testifiers in a neutral capacity? Seeing none, Senator Hudkins to close.

SENATOR HUDKINS: Thank you, Senator Bourne. We see this bill as a win-win in that as it is amended, that if a person does find their gift certificate in the drawer and it has an expiration date and they throw it away, then...if there's an expiration date on it. Then it does escheat to the state. If there is no expiration date on it, it does not escheat to the state. But let's go back. If it does, it takes that consumer three years to...he cannot ask for it back until after three years. The retailer reports all of these into the state but if that gift card or that gift certificate is paid for in cash, if there is no name anywhere then there is no way for that consumer to get that money back because there's no record. I would call your attention to what I passed out to you, on the second page. It says 53 percent of all consumers say that they will spend more than the card's value if there's something that they want and somebody has given them \$25 as a gift certificate or gift card and it comes to 30-something. They will make up the difference with their own money. They're not going to say,

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well, I only have, you know, this much money. That's all I can spend. They're not going to do that. They're going to go ahead and use that certificate plus their own money. And, finally, 15 percent of the gift card recipients start shopping at a store. Maybe they have never shopped at that store before but since they got a gift certificate from there they might now go there. I think that's probably all I needed to say. I would like to know where the State Treasurer is getting 3.8 percent interest. I'd like to get some of that (laughter). Are there any questions?

SENATOR BOURNE: Thank you. Questions for Senator Hudkins? Seeing none, thank you.

SENATOR HUDKINS: Thank you.

SENATOR BOURNE: That will conclude the hearing on LB 173. Senator Thompson to open on LB 194.

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SENATOR THOMPSON: (Exhibit 12) Thank you, Senator Bourne. I'd like to...I'm Nancy Thompson, District 14 and this is the second time I've introduced the bill. Last year it was referenced to Health and Human Services, but I think it's easier to explain if I use props. So this is what a medical lien is about. You got Clifford the Big Red Dog and Clifford is minding his own business, driving down the street and the Aflac ducks runs a stop sign, hits Clifford. Clifford is terribly injured, goes to the hospital, has a number of people who help Clifford as he's recovering after the hospital, maybe therapists and doctors and other people who are taking care of him. And Clifford is insured and so Clifford ends up suing the Aflac duck because he has lots of expenses in addition to the hospitalization and other things that come from this. And so there's a settlement and this money is the settlement. But we created in law a few years ago something called the medical lien. And it was put in place so that hospitals and doctors and others who took care of Clifford didn't know Clifford was insured, would take care of them and not have the risk of knowing that they'd never be able to recover if there were a settlement that would happen. So we created the medical lien. I wasn't here when that happened but it was a few years back. And

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this can be attached to the settlement. So now you've got the medical lien. This is when you have unintended consequences because here is another provider and this provider decides instead of asking for the money that's been negotiated going through the person's insurance, this person is insured. And as you know, the insurance copy that you get has the retail, the negotiated price and so forth. They realize they can get more money if they go for retail. So if on your insurance piece that comes back it says, you know, amount of the cost, a hundred bucks. What your insurance company has negotiated which is 80 bucks, your responsibility is the copay and they will take care of the rest. So in a way around having to only get the 80 bucks, this particular provider says well, I want it out of your settlement. So they get the full hundred bucks out of your settlement instead of your insurance covering it to the point of 80 bucks. And so what in essence has happened is somebody getting kind of a bite out of your money that really needs to be used for other purposes. These are all my grandchild's toys. So what this bill does and I have an amendment to give to the committee, and this, when I first got this bill...this is the only way I could figure it out is to put a little thing together here. What this amendment does and it's still a work in progress. We're trying to work with the people who have concerns is to say, Clifford now under the new way the law would read, if Clifford has insurance the only thing that comes out of here is the copay. The insurance will be filed. The 80 bucks will go to this provider. The copay part would come out of the lien and that would be it instead of taking the retail price out of this money which is for the victim to be able to manage a lot of their medical bills as well as any other issues that may have been included in the settlement. I consider it kind of a loophole. I think we can work with the Department of Health and Human Services as well as some of the other people who will testify to get language. I think the amendment comes closer. We think within a couple of days we might be able to get something to you that may satisfy and get to the issue of making sure that the victim here gets the proper amount of the settlement and that there isn't this avenue around the...for payment that's really taking from the settlement and should the person if they're insured, paid into their insurance for all these years be able to submit that as a claim to their own insurer and just use this money for the copayment. And that's this.

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SENATOR BOURNE: Thank you. Questions for Senator Thompson?
Senator Friend.

SENATOR FRIEND: What's the panda bear? (laughter) Who was that?

SENATOR THOMPSON: This could be the physical therapist perhaps.

SENATOR FRIEND: Can I have that when you're done (laughter)?

SENATOR THOMPSON: No. This is from the Little People ark.

SENATOR FRIEND: That's the chiropractor.

SENATOR THOMPSON: Yeah, the chiropractor (laugh), yeah. I understand you already heard about this once this afternoon. Okay. Thank you.

SENATOR BOURNE: Somewhat. Thank you. No questions for Senator Thompson. Thank you.

SENATOR THOMPSON: Thank you.

SENATOR BOURNE: Would the...thank you. First testifier in support.

GREG COFFEY: Thank you, Senator Bourne, members of the committee. Again, my name is Greg Coffey. The last name is spelled C-o-f-f-e-y. I'm an attorney with Friedman law offices in Lincoln, Nebraska, and I'm here on behalf of the Nebraska Association of Trial Attorneys. I spoke at length this morning and as Senator Bourne reminded me, brevity is the soul of wit so I'll try to be a little wittier (laughter).

SENATOR BOURNE: (Laugh) Not brief but witty.

GREG COFFEY: Yeah. As we discussed this morning or earlier today I guess, the issue here is that you have health insurance that's available to pay some of the medical bills or maybe all of the medical bills or at least most of the medical bills. And somebody who has that medical health

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insurance available to them ought to be able to use it. As I gave the example this morning, if you're leaving the hearing on your way home and you get hit by a drunk driver and you go to the hospital, that drunk driver they're going to be happy to accept that drunk driver's health insurance and accept that as payment in full of the medical bills that they incur, the drunk driver. But you, the victim of this car accident, the victim of this drunk driver and you submit your health insurance card, there is a trend among medical providers to say, oh, no, we don't want that. We want to hold on and use this lien for a purpose for which it was never designed. It was designed to make sure that the medical providers are not left holding the bag at the end of a case, that they get paid out of the proceeds if they otherwise aren't paid. All this bill is designed to do, it's not designed to leave anybody without payment. It's not designed to circumvent getting doctors or hospitals paid. It's designed to make sure that the available sources of money that are there get used. I gave an example that I thought was a pretty compelling example this morning of a client of mine that had a total of \$100,000 worth of liability coverage and underinsured motorist coverage combined but she had \$200,000 worth of medical bills. And after the settlement occurred, her doctor was telling her that unless she paid the full ticket price under their lien for subsequent medical care for a proposed surgery that they told her she needed, they weren't going to provide medical care to her at all even though she had health insurance that was there on the hook, ready, willing, and able to pay. I was told that they wouldn't allow me to submit the bill for them. I have another client that falls...I know that there are some amendments pending. I have another client that had a similar situation. His settlement occurred...the liability was an issue in this particular case. It was a slip and fall on snow and ice. And we ended up settling it for less than the total value of the medical bills. Medicare had paid his bill to the doctor and when the doctor's office got wind of the settlement the doctor decided he wanted to...the doctor's office, the patient accounts representative submitted a lien to us asking us to pay the full amount of the bill in spite of the fact that they'd already been paid by Medicare. That is a situation that just produced draconian results because the settlement was not sufficient to cover the total amount of the medical bills by themselves let alone leave anything aside for the

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client. So that's why we think that this bill, LB 194, needs to be forwarded. It doesn't leave anybody out in the cold without any funds. It does what the lien law was supposed to do. But it doesn't allow the medical providers with sort of a way to circumvent the original purpose of the lien law. If there are any questions?

SENATOR BOURNE: Thank you. Questions for Mr. Coffey. Senator Flood.

SENATOR FLOOD: Mr. Coffey, thank you for your testimony. When you file a complaint on behalf of a plaintiff, I assume you do primarily plaintiff's work?

GREG COFFEY: Correct.

SENATOR FLOOD: What amount of special damages do you plea? Do you plea the amount that was paid by the insurance company or do you plea the amount that the hospital or the doctor or the medical professional billed without discounting anything that insurance might have paid?

GREG COFFEY: I plead the full amount of the bill.

SENATOR FLOOD: You plea the full amount of the bill.

GREG COFFEY: Yes.

SENATOR FLOOD: So that's the number you're primarily concerned with?

GREG COFFEY: That's the number that I...yeah, that's the number that I put in the pleading, certainly.

SENATOR FLOOD: But today your testimony is, we should be really looking at when the hospital gets paid, we should be looking at the discounted amount. Is that right?

GREG COFFEY: Correct.

SENATOR FLOOD: Okay. Thank you.

SENATOR BOURNE: Thank you. Further questions? Just so, for clarity, we're talking about a situation where there are two insurance carriers involved. One is a health carrier,

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one is a property and casualty carrier. Then you have the individual who's hurt by someone who's covered with a property and casualty company. That individual has health insurance with any health insurance carrier. He or she goes to a doctor and so what you're saying basically is that the injured person by the way the lien law works today is denied the benefit of the negotiated discount between the doctor and the injured parties' health carrier.

GREG COFFEY: That's correct. And the reason that's important, Senator Bourne, is as I described earlier, it isn't always the case that there is an unlimited amount of resources to pay the damages that somebody may incur. It's often the case that there is an inadequate amount of insurance of liability and underinsured motorist coverage available to pay the person's damages including the medical bills and if there's this other source of money out there, the lien law was intended to make sure that the medical providers aren't left with nothing. With the lien law the way we're intending to amend it through LB 194, the medical providers still won't be left with nothing. That's why in response to Senator Flood, yeah, we're pleading the whole amount but the reality is, liability issues may prevent us from recovering the whole amount. As you know, the comparative fault statute that exists in Nebraska says that if my client is a percentage at fault the client's damages are reduced by that percentage of fault. So my client may not recover the full amount of those bills. And even if my client is zero percent at fault, if there's not sufficient liability coverage there, they may never see the whole amount but I've still had providers tell me, they want the whole amount out of this finite source of money, the liability coverage when there's an infinite potentially source of money to pay medical bills which is the health insurance.

SENATOR BOURNE: Okay, thank you. I was under the impression before just recently that Midwest Neurosurgery case solved this problem. And I was under the impression, as a matter of fact, when LB 194 was introduced, that it wasn't necessary because the Midwest Neurosurgery case resolved this issue. And what you're saying is that's not the case.

GREG COFFEY: Yeah, I think that the Midwest Neurosurgery

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bill, I think the people on the other side of this question would argue that the Midwest Neurosurgery bill only applied to the Midwest Neurosurgery case. And that it leaves open certain questions about whether you can contract around the language in the Supreme Court decision. Whether you can amend the contract so that it doesn't read the way the Midwest Neurosurgery contract read. And if they do that then they skirt around the problem and we're back to the issue that we're addressing right now.

SENATOR BOURNE: Okay. Further questions...?

SENATOR FLOOD: Real brief. With regard to an indigent patient of a hospital, for instance, that possibly Medicaid comes in and pays for, would you concede that the hospital takes a significant...makes a significant discount for Medicaid patients?

GREG COFFEY: Yes. Can I explain?

SENATOR FLOOD: Sure.

GREG COFFEY: Medicaid presents sort of a unique problem and that is that my indigent client that doesn't have any health insurance is going to end up paying the full ticket price. Okay. That's because Medicaid will say, you've got to go after any other source first. You can't come after Medicaid if there's liability...if there's somebody else that you're going to go after for liability purposes. We're not going to pay it and I've been left in circumstances where an indigent Medicaid eligible client had to pay the full ticket price and there was really nothing that I could do about it. And Medicare is a little bit different of an issue. They still have what you said, the discount, and it could be a significant discount. But like I was describing, the exact facts where I had \$25,000 worth of medical expense. We ended up settling it for what they described, the defendant in the case described as nuisance value. I thought going in, I had a fairly decent liability case but after I had spent a lot of time and a lot of cost, costs that the doctors and hospitals didn't share or contribute a part of, after I had incurred all that cost we ended up settling it for what they described as nuisance value after we learned, you know, two years into the case that maybe liability wasn't as clear as we had hoped. So we settled it for far

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less than what the medical bills were. And now I've got a doctor's office wanting their bill paid in full. I don't have the money.

SENATOR FLOOD: Can you see where the hospital would be concerned if a plaintiff...say there's \$32,000 in legitimate special damages and Medicaid paid the discounted rate of that. And the indigent plaintiff did not pay anything for the special damage, in fact, received the services free through the Medicaid program. Files are claimed against a defendant, secures a verdict and is entitled to \$32,000 of which you get 33 plus percent of and the hospital gets nothing. And they were the ones that discounted the services. Does that make sense to you?

GREG COFFEY: I have an observation about that and that is that I don't think that tells the whole story because in the case of Medicare or Medicaid you've got a question about when I submit the bills to court, what the fair and reasonable value of the service was. Okay. I don't get to recover the ticket price necessarily. I get to recover the fair and reasonable value of the medical service that was provided so even if I...I'm going to plead as much as I can possibly throw in there because if I don't plead it I don't get it.

SENATOR FLOOD: Sure.

GREG COFFEY: All right. So that's a ceiling and I start working down from there. What they will tell you if they get up here and testify, what they will acknowledge is that this is an issue separate from the lien law. This is an issue regarding when I submit the bill to the court and the defendant on whoever is representing the liability defendant argues well, what is the fair and reasonable value of the service? There are cases pending in front of the Supreme Court right now to address this question. Whether I can ask for the full ticket price or whether...what fair and reasonable is is defined by what was actually paid by Medicare and Medicaid and what the provider actually accepted. Okay. So I think that that particular concern is being addressed outside of the lien law and strictly remaining germane to the lien law, the lien law is simply there to make sure that the provider doesn't get left out in the cold. And even with Medicare's reductions and

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Medicaid's reductions, they're not being left out in the cold. The Legislature passes laws that determine what's fair and reasonable for Medicare and Medicaid. I think there were bills before the Legislature last year to determine whether to raise the rates for Medicaid and whether that happens or not is up to the Legislature to determine. So if the providers thinks that...

SENATOR FLOOD: Thank you. I know where you're going. Thank you.

GREG COFFEY: Okay.

SENATOR BOURNE: Just ask one last question. Maybe if there was some clarity and as I understand it, there isn't any in law today as to which carrier is primary in this situation, would that resolve it?

GREG COFFEY: And Mr. Keetle and I spoke about that between these two hearings. What I think he meant to say was that if I as the injured driver have a medical payments coverage under my own policy that would be primary. And I agree with that. And then if there's a medical payments provision under that policy they get the full ticket price. I don't have a quarrel with that. But if there's any more treatment down the road and I have health insurance, that secondary health insurance should kick in. What...

SENATOR BOURNE: After the settlement?

GREG COFFEY: Before or after. Just if they refer the medical bills and there's health insurance to pay for it, that...

SENATOR BOURNE: Oh, after that component of the...

GREG COFFEY: Right.

SENATOR BOURNE: Okay.

GREG COFFEY: Like for example, on my auto policy I may have \$10,000 worth of medical payments coverage...

SENATOR BOURNE: Okay, when that's exhausted. Okay.

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GREG COFFEY: ...and once that...they put \$10,000 in a barrel when my accident occurs and as soon as that \$10,000 is spent it's done and gone. And then secondarily to that, if I'm still continuing to receive medical treatment, my health insurance will kick in. And I agree with that and I don't quibble that USAA in my case would be paying the full ticket price for my medical expenses up to the first \$10,000. And that my health insurance kicks in after that. What I would want to make sure that the committee appreciates is that there was a recent Supreme Court decision that came out in December and the name of it escapes me. I apologize. That said that the liability insurance for the other driver, though, is not insurance that applies to me. They can't say that we're using that as the secondary insurance. Okay? The bad driver's insurance policy is not secondary. That's his insurance and that's not my insurance. Whatever they pay me is my money and now all of a sudden if they're taking out of that pool of money they're taking away from my pocket, not my insurance company's pocket.

SENATOR BOURNE: Great. Further questions? Seeing none, thank you. Other testifiers in support? Testifiers in opposition. Welcome.

LYMAN LARSEN: Thank you. Senator Bourne, members of the committee, my name is Lyman Larsen, L-a-r-s-e-n. I am here to testify in opposition to LB 194 as a practicing attorney on behalf of Nebraska Hospital Association. First of all, I think that this LB 194 basically undermines the purpose of the lien statute as it was originally drafted and it severely limits the lien that is currently available to the hospital. For example, the lien statute says that no such lien shall be valid in an amount in excess of applicable medical insurance. Applicable medical insurance can take many different forms. It can be medical pay insurance under an automobile policy. I could be an accident policy. It could be an individual health insurance policy. It could be a group policy. And the injured person may have one, all, or none of those but basically what this says is that if whatever insurance may be available, if there's any insurance available then the lien is not available for the amount in excess of the insurance. If you have, for example, an accident policy and that's the only thing available and say, there's \$10,000 in coverage and maybe the

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hospital bill was for \$50,000. Basically, what this bill says is that the hospital cannot file a lien for the difference. So there's been a lot of talk about, for example, the Midwest Surgery case. That's a very different situation. In that case the Supreme Court, as I read it, basically held, among other things, that if a healthcare provider has a network agreement or some sort of an agreement with the insurance company that says that under these circumstances I will accept payment provided here even if it's discounted as full payment then the hospital cannot file a lien to secure the excess. If that case is applicable to the circumstances then that is something that's already in the law and it's not necessary to add anything or to amend the bill. What this bill is basically going to do is going to create a whole lot of questions that basically have been answered. The bill already provides for a lien. It has a fairly simple mechanism for enforcement. We're going to have to find out what you mean by medical insurance. What is meant by applicable coverage? There could be a coverage dispute and if there's a coverage dispute, is the medical insurance applicable or is a judge going to have to wait for another case to progress through the court to find out whether it's applicable or not. It adds a lot of complications. It's going to really undermine the effectiveness of the law. And, for example, there may be another question, if the plaintiff and the injured party can offer the full medical bill in evidence and secure an award or a judgment based upon that, is it fair then to limit the hospital to a lien for much less?

SENATOR BOURNE: Thank you. Questions for Mr. Larsen? Seeing none, thank you.

LYMAN LARSEN: Thank you.

SENATOR BOURNE: Next testifier in opposition.

ROGER KEETLE: (Exhibit 13) Good afternoon, Senator Bourne and members of the Judiciary Committee. For the record, my name is Roger Keetle, K-e-e-t-l-e. I'm with the Nebraska Hospital Association. I wanted to somewhat supplement the testimony that was presented before and just emphasize what this does as drafted and as presented to you. It would eliminate the hospital lien if there's Medicare or Medicaid. And there's a federal law that mandates the states must have

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a program where they deny a claim where there is someone who has a third-party fund to recover from. So you'll probably hear soon after me that this is contrary to what the hospital has to do. If there's a third party that's liable, the hospital is not paid and has to pursue that claim in court and we need this lien, the hospital lien, to be able to recover in those situations. So that's mandated by federal law and that's how that one works. The other issues that I think we're talking about is the Midwest Neurosurgical case. We frankly thought like you, Senator Bourne. That basically could solve this problem and I would say that I probably stepped on a landmine when I used the word elect a few times ago. If there is applicable health insurance, we read this court to say that that's what we pursue. And if that insurance does pay and if it is primary that's what I think the Midwest case says. Now, as Senator Flood has pointed out, that does leave some good news for the plaintiff in that we've taken the discounted amount and they get to sue for the full amount of the bill and plead that. So that's into the system and that's what the Supreme Court said and I guess that's kind of how it's going to work from now on so that is an advantage. And remember, those bill charges are used for the indigent person or whomever is injured to get pain and suffering so that is multiplied usually. So that's the system we have right now and I'm not sure if that's really reflected in our insurance costs. I see the light has turned yellow already and I would like to say that I hope I've cleared up my concern about...I use the word elect. Actually it was forced. The provider, if there's no insurance, has to file against the other company and I apologize for that.

SENATOR BOURNE: No, that's okay. Thank you, Mr. Keetle. Are there questions? Seeing none, thank you. Next testifier in opposition. (See also Exhibit 14)

DICK NELSON: (Exhibit 15) I do have testimony to hand around. I don't see your clerk. Thanks. Senator Bourne and members of the Judiciary Committee, good afternoon, my name is Dick Nelson, N-e-l-s-o-n. I am director of the Department of Health and Human Services Finance and Support and I am here to testify in opposition to LB 194. The abolishment of a medical providers lien for Medicaid eligible services would have a negative effect on the Medicaid program and its ability to meet the federal

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requirement to be the payer of last resort. As Mr. Keetle alluded to, when the department has established the probable existence of a third party liability at the time a Medicaid provider's claim is filed, the department must reject that claim and return it to the provider for a determination of the full amount of the third party's liability. Once the amount of a liability is determined the department must then pay the claim but only to the extent that the payment allowed under the Medicaid payment schedule exceeds the amount of the third party's payment to that particular provider. Generally, this federal requirement is referred to as the payor of last resort provision. This bill would eliminate all medical liens for persons covered by Medicaid. By doing so, every medical provider would become a general creditor. In a car accident situation, for example, and I don't have any props today, an ambulance is called and a hospital and physicians treat the patient. If all medical providers become general creditors they share in recovery pro rata or in proportion to their claim to the total. Medicaid then must pay the balance of the medical bills up to the Medicaid allowable amount. If the hospital is paid less than the full amount of the Medicaid rate Medicaid must pay the difference. If the hospital is paid the full Medicaid rate from the tort recovery Medicaid will have no obligation. When other general creditors reduce the amount the medical provider can recover Medicaid's obligation is increased. Also in the absence of a legally enforceable lien there is the potential a liable third party will pay a judgment or settlement directly to the patient who may spend the money without reimbursing the provider. I do want to note that the department does not object to reducing the amount of the enforceable lien to the amount Medicaid would pay. We believe this would reflect the current laws announced by the Nebraska Supreme Court in *Midwest Neurosurgery versus State Farm* on September 17, 2004. The issue of liability in liens is a complex one. LB 278 which will be heard later by this committee introduces an additional way to address Medicaid's responsibilities. We are certainly willing to assist the committee and interested parties in working on LB 194 and dealing with the issue in the context of both bills. Thank you for the opportunity to testify. I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Nelson?
Seeing none, thank you.

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DICK NELSON: Thank you, Senators.

SENATOR BOURNE: Next testifier in opposition.

DAVID BUNTAIN: Senator Bourne, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I'm the registered lobbyist for the Nebraska Medical Association and we are opposed to LB 194 for the same reasons that you've just heard from the other opponents. And in the interest of time that will be the extent of my remarks.

SENATOR BOURNE: Thank you. Questions for Mr. Buntain. See no questions, thank you very much.

DAVID BUNTAIN: Thank you.

SENATOR BOURNE: Further testifiers in opposition? Are there any neutral testifiers? Senator Thompson to close.

SENATOR THOMPSON: Thank you, Senator Bourne and members of the committee. I would just like to draw your attention again to the amendment that we presented to you which I think deals in part with some of the issues. We also need to get to the issue of the Medicaid eligibles as the payers of Medicaid, as the payer of last resort would get a portion of that amendment worked so that we can deal with the issue that was brought to you by the department. In my closing, I just want to bring us back to the issue at hand and that is that the victim in this situation, the person who was injured, who now has a settlement, has the potential and in actuality has happened when they are insured that instead of the settlement paying their copay, we do have providers who are going directly to the settlement and paying what you might want to call the sticker price, the nonnegotiated price, higher than what their own insurance company would be paying off that settlement. And we went, in passing this law years ago it was for a public policy purpose of making sure that the medical providers were paid if there was a settlement. What we need to do is make sure also that this backdoor thing isn't happening where people who have been injured and do get a settlement and have insurance or Medicaid, the money is now taken from their settlement and paid at a hundred percent and not a negotiated price. Their own insurance that they've paid through for their entire

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lives many times in the same business place won't even kick in. And I think, you know, we've been talking with the opponents. I'm hopeful that we can come to some resolution. It doesn't have to be this bill if you have other mechanisms to do this in the committee. But this is an injustice. This is an injustice to the person who has been harmed. We want to make sure our medical community is protected financially if someone presents themselves and needs treatment and that they don't have to worry about it. But we shouldn't continue this loophole so that the person who's been injured is still harmed by a few providers out there who seek other ways around getting money paid to them. So I would hope that the committee would work to resolve this issue and I certainly will work with the people here. Many of the people who are testifying are testifying to the bill and we just got the amendment today and so they didn't have much of an opportunity to look at it but for the last couple of hours or so. But I'm hopeful that we can work something out and get this problem solved. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Thompson? Seeing none, thank you.

SENATOR THOMPSON: Thank you.

SENATOR BOURNE: That will conclude the hearing on LB 194 and the hearings for the day. Thank you.